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# DAVIDSON'S
# CONCISE PRECEDENTS
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WITH
*PRACTICAL NOTES*

ARRANGED UNDER THE FOLLOWING HEADINGS:

*PART II.*

| | | |
|---|---|---|
| NOTICES. | PARTNERSHIP ARTICLES. | SEPARATION DEEDS. |
| PARCELS. | POWERS OF ATTORNEY. | SETTLEMENTS. |
| PARTITIONS. | RELEASES. | WILLS. |

TWENTY-FIRST EDITION
BY

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# ADDITIONS AND CORRECTIONS.

Page xix, Prec. IV. *After* "Public House," *add* "Premium Paid."

Page 32, note (*u*). At end of note *add* "As to the appointment of a corporation sole as a custodian or other trustee, or as a personal representative, when there is a vacancy in the office and provisions as to devolution and vacancies in the office, see L. P. Act, 1925, s. 180."

Page 38, line 30. *After* "A. E. Act, 1925, s. 20, sub-s. (2)" *add* "repealed by J. Act, 1925, 6th Sch. and replaced by s. 165."

Page 43, note (*s*). At end of note *add* "repealed (see p. 418)."

Page 44, note (*u*). At end of note, *add* "As to the power of a trustee going abroad to delegate his trust, see T. Act, 1925, s. 25 (set out at p. 452)."

Page 61, line 33. *After* "*Clough* v. *Samuel*, [1905] A. C. 442" *add* "affirming C. A. in *Re Reis*; *Ex parte Clough*, [1904] 2 K. B. 769, where the arguments on this point are fully stated."

Page 87, line 25. *After* "or tenant to mines, &c.," *add* "See *Re Markham Main Colliery Co.* (1925), 41 T. L. R. 672."

Page 109, note (*q*). *For* "legal authority" *read* "local authority." As to local land charges, see L. C. Act, 1925, s. 15, and Local Land Charges Rules, 1925.

Page 130, line 9. As to execution of instruments by or on behalf of corporations, see L. P. Act, 1925, s. 74 (set out at p. 448).

Page 144, line 16. *After* "(sub-s. 4)," *add* "See *Gregg* v. *Richards*, [1926] 1 Ch. 102.

Page 146, line 17. *For* "conveyancer" *read* "conveyance."

Page 147, line 3. At end of paragraph, *add* "See further as to corporations sole and aggregate, L. P. Act, 1925, s. 180."

Page 170, note (*y*). At end of note, *add* "This Precedent may be adapted to a conveyance by an administrator, but, unless with a Will annexed, this recital would be omitted."

Page 174, note (*l*). At end of note, *add* "That freeholds may be conveyed by a husband to his wife, or by a wife to her husband, see L. P. Act, 1925, s. 72. As to trust property, see section 170 of that Act."

Page 199, note (*m*). *After Cundiff* v. *Fitzsimmons*, [1911] 1 K. B. 513, *add* "But see p. 359, note (*l*)."

Page 200, note (*p*). *For* "Jully" *read* "Jolly," and at end of note, *add* "As to registering restrictive covenants as land charges, see pp. 142, 208, note (*k*)."

Page 208, note (*k*). *Add* "See also pp. 142, 200, 206."

Page 222, note (*a*). *For* "denied" *read* "desired."

Page 269, note (*s*). At end of note, *add* "*Batchelor* v. *Murphy*, [1926] A. C. 63."

Page 302, note (*d*). *Add* "(set out at p. 413)."

Page 322, line 28. *After* "or as the mortgagor shall direct," *add* "That the mortgagor is entitled to require a transfer of the mortgage to a third person, see L. P. Act, 1925, s. 95."

Page 345, note (*c*). *For* "section 11," *read* "section 111 (advance on joint account)."

Page 357, m. n. *For* "Proviso for cesser on redemption" *read* "Proviso for redemption."

Page 357, end. *For* "Precedent IV" *read* "Precedents I, II, IV and V."

Page 359, note (*l*). *After* "The covenants implied, &c." *insert* "If preferred, the statutory covenant implied by section 76 (1) (D) (see p. 132) may be relied on, and the express covenant omitted."

Page 365, m. n. *For* "Habendum for term of years" *read* "Habendum."

Page 367, line 8. *For* "a life interest" *read* "an equitable interest in remainder in fee simple."

Page 367, m. n. *For* "Conveyance of the estate" *read* "Assignment of contingent interest."

Page 392, line 13. *For* "from the date of the mortgage" *read* "from the 1st day of January, 1926."

Page 396, m. n. *For* "1922" *read* "1925."

Page 398, line 22. *For* "from the date of the mortgage" *read* "from such date."

Page 400, line 5. *For* "from the date thereof" *read* "from the 1st day of January, 1926."

Page 402, line 9. *For* "from the date of the mortgage" *read* "from the 1st day of January, 1926."

## NOTICES.

### General Remarks.

Service of notices generally.

The serving or giving of notices generally is now regulated by sect. 196 of the L. P. Act, 1925, which is as follows :—

L. P. Act, 1925, s. 196.

**196.**—(1) Any notice required or authorised to be served or given by this Act shall be in writing.

(2) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4) Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5) The provisions of this section shall extend to notices required to be served by any instrument affecting property executed or coming into operation after the commencement of this Act unless a contrary intention appears.

(6) This section does not apply to notices served in proceedings in the court.

This section, with the exception of sub-sect. (5), which is new, replaces sect. 67 of the C. Act, 1881. The practical effect of sub-sect. (5) is that it is now unnecessary to expressly incorporate the statutory provisions in any instrument affecting property. If, however, such instrument contained special conditions as to serving or giving notice, this might be held to show " a contrary

intention" within the sub-section, unless some words were added to show that the statutory provisions were included or were not intended to be excluded.

Notice by advertisement against claims.

By sect. 29 of the L. P. Act, 1859, personal representatives could protect themselves against liability to claimants against the estate, before distributing the assets of the deceased, by notice by advertisement in certain newspapers.

The T. Act, 1925, sect. 27, now replaces the above provision and extends the protection to trustees of a settlement and to trustees for sale, and is as follows :—

T. Act, 1925, s. 27.

**27.**—(1) With a view to the conveyance to or distribution among the persons entitled to any real or personal property, the trustees of a settlement or of a disposition on trust for sale or personal representatives, may give notice by advertisement in the Gazette, and in a daily London newspaper, and also, if the property includes land not situated in London in a daily or weekly newspaper circulating in the district in which the land is situated, and such other like notices, including notices elsewhere than in England and Wales, as would, in any special case, have been directed by a court of competent jurisdiction in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

(2) At the expiration of the time fixed by the notice the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates, to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the trustees or personal representatives then had notice and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution; but nothing in this section—

(a) prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person other than a purchaser, who may have received it; or

(b) frees the trustees or personal representatives from any obligation to make searches or obtain official certificates of search similar to those which an intending purchaser would be advised to make or obtain.

(3) This section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

Where the executor has actual notice of a debt, he is not protected merely because the creditor does not reply to the advertisement : *Re Beatty* (1892), 29 L. R. Ir. 290. For a form of Notice under this section, see Precedent VIII.

## PRECEDENTS.

### I.

NOTICE *to* QUIT *by* LANDLORD *to* TENANT *from Year to Year of an* AGRICULTURAL HOLDING (*a*).

PRECEDENT I.

NOTICE TO QUIT.

I, THE UNDERSIGNED, A. B., of, &c. (*b*) [*landlord*], hereby give you notice to quit and deliver up on the —— day of —— next, [*or* at the expiration of the year of your tenancy which will expire next after the end of twelve calendar months from the time of your being served with this notice (*c*),] possession of all that farm and premises called —— Farm, situate in the Parish of ——, in the County of ——, held by you as tenant. AND this notice is given for the following reasons [*state reasons* (*d*)]. Dated this —— day of ——, 19—.

To C. D. [*tenant*] (*e*).

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### II.

NOTICE *by* LESSEE *to* LESSOR *of intention to* DETERMINE LEASE *of a Dwelling-house.*

PRECEDENT II.

NOTICE OF DETERMINING LEASE.

IN PURSUANCE of a power contained in a Lease dated the —— day of ——, ——, and made between you of the one part and me the undersigned A. B., of, &c. [*lessee*], of the other part, I hereby give you notice that I intend to determine the lease on the —— day of ——, 19—, and that I shall deliver up to you the possession of the premises therein comprised on the same day. Dated the —— day of ——, 19—.

To C. D. [*lessor*].

---

(*a*) As to the restriction on notices to quit on the occasion of a sale of the holding, see Agr. H. Act, 1923, s. 26.

(*b*) If given by an agent, the words "As the agent for and on behalf of your landlord, —— of ——, in the County of ——," should be here inserted. The notice should be given by or on behalf of the person having the legal estate: see *Stait* v. *Fenner*, [1912] 2 Ch. 504; *Graham* v. *M'Ilwaine*, [1918] 2 I. R. 353, and compare *R.* v. *Swiffe*, [1913] 2 I. R. 113.

(*c*) As to length of notice, see Agricultural Holdings Act, 1923, sect. 25, and *Edell* v. *Dulieu*, [1924] A. C. 38. As to what is sufficient service, see sect. 53.

(*d*) See Agr. H. Act, 1923, sects. 12, 27.

(*e*) If the notice is given by the tenant, for "to quit" say "that I intend to quit," for "your tenancy" say "my tenancy," and for "held by you" say "held by me."

## III.

PRECEDENT III.

NOTICE BY PURCHASER OF LEGACY TO EXECUTOR.

NOTICE *by* PURCHASER *of a* LEGACY *to* SURVIVING EXECUTOR.

I, THE UNDERSIGNED, A. B., of, &c. [*purchaser*], hereby give you notice that by an Assignment dated the —— day of ——, 19—, and made between [*parties*], the legacy of £—— bequeathed to the said E. F. by the Will of X. Y., of, &c., deceased, of which you are the surviving executor, has been assigned to me absolutely, and I require you to pay the same to me. Dated this —— day of ——, 19—.

To C. D. [*executor*].

## IV.

PRECEDENT IV.

NOTICE BY PURCHASER OF REVERSIONARY INTEREST.

NOTICE *by the* PURCHASER *of a* REVERSIONARY *Interest in a* SHARE *of* CONSOLS *to the* TRUSTEES *of a* MARRIAGE SETTLEMENT (*f*).

I, THE UNDERSIGNED, G. H., of, &c. [*purchaser*], hereby give you notice that by an Assignment dated the —— day of ——, 19—, and made between [*parties*], ALL THAT the one equal undivided fifth part or share of the said D. B., one of the children of A. B., of, &c., and C. B. his wife, in the sum of £—— Two-and-a-half per Cent. Consolidated Stock, now standing in your names, as trustees of the settlement made upon the marriage of the said A. B. and C. B., was assigned by the said D. B. to me absolutely (*g*), subject to the successive life interests therein of the said A. B. and C. B. Dated this —— day of ——, 19—.

To C. D. and E. F. [*trustees*].

## V.

PRECEDENT V.

NOTICE BY MORTGAGEES OF INTENTION TO EXERCISE POWER OF SALE.

NOTICE *to* MORTGAGOR *by* SURVIVING MORTGAGEES *with* POWER *of* SALE, *of intention to* EXERCISE POWER *of* SALE *if all* PRINCIPAL *Money and* INTEREST *is not paid by a given day.*

WE, A. B., of, &c., and C. D., of, &c., as the surviving mortgagees under a Mortgage [Legal Charge] dated the —— day

(*f*) Notice should always be given to the trustees of a marriage settlement or other instrument on any sale or mortgage of a reversionary interest in personalty, in order to prevent any subsequent purchaser or mortgagee gaining priority by giving a prior notice to the trustees. As to dealings with equitable interests in land, see L. P. Act, 1925, sect. 137, and as to nominating a trust corporation to receive notices, see sect. 138 of the same Act.

(*g*) This form can be adapted to the case of a mortgage. See *Re Pain*, [1919] 1 Ch. 39.

of ——, ——, and made between [*parties*], hereby require you to pay off the principal money and interest thereby secured, and our costs, on or before the —— day of ——, 19— [*a day not less than —— calendar months from the service of the notice, according to the time required*], and we hereby give you notice that, unless all principal money, interest, and costs are paid on or before that day, we shall sell the property therein comprised under the power of sale implied by law [as varied by the mortgage [legal charge] ] (*h*). Dated the —— day of ——, 19—.

To E. F. [*mortgagor*].

PRECEDENT V.

NOTICE BY MORTGAGEES OF INTENTION TO EXERCISE POWER OF SALE.

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## VI.

### NOTICE *by a* SECOND MORTGAGEE *to a* FIRST MORTGAGEE.

PRECEDENT VI.

NOTICE BY SECOND TO FIRST MORTGAGEE.

I, THE UNDERSIGNED, A. B., of, &c. [*second mortgagee*], hereby give you notice that by a Mortgage [Legal Charge] dated the —— day of ——, 19—, and made between [*parties*], the hereditaments situate in the Parish of ——, in the County of ——, and now in mortgage to you, were demised to me for the term of years therein mentioned [charged in my favour] by way of [legal] mortgage for securing the sum of £—— and interest subject to your mortgage thereon. Dated the —— day of ——, 19—.

To C. D. [*first mortgagee*].

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## VII.

### NOTICE *of* ASSENT *to* DEVISE *of* FREEHOLDS (*to be endorsed on* PROBATE) (*k*).

PRECEDENT VII.

NOTICE OF ASSENT ENDORSED ON PROBATE.

NOTICE. We, the within-named A. and B. [*executors*] hereby give notice that by an Assent in writing [under our hands and seals] dated the —— day of ——, &c., we as personal representatives of the within-named testator have assented to the within-mentioned devise in favour of the within-named C. [*devisee*]. Signed, &c. Dated the —— day of ——, 19—.

---

(*h*) As to what is sufficient notice, see *Barker* v. *Illingworth*, [1908] 2 Ch. 20. The right to notice may be expressly waived by the terms of the mortgage deed : see *Re Thompson and Holt* (1890), 44 Ch. D. 492.

(*k*) See A. E. Act, 1925, sect. 36 (5), set out under ASSENTS, General Remarks. If necessary, add any special provisions in the Assent. If there is no separate Assent, but the property was conveyed to the devisee (see p. 55), the Notice can be varied accordingly.

## VIII.

PRECEDENT VIII.

NOTICE BY ADVERTISEMENT AS TO CLAIMS OR DEMANDS.

NOTICE *by* ADVERTISEMENT *by* EXECUTORS *requiring persons to send any* CLAIMS *or* DEMANDS *before* DISTRIBUTION (*l*).

A. Deceased. Pursuant to the Trustee Act, 1925, NOTICE is hereby given that all persons having any CLAIMS or DEMANDS against the ESTATE of A. late of —— &c. (who died on the —— day of ——, and whose Will was proved in the Principal Probate Registry [*or* District Probate Registry [Sub-registry] at ——] (*m*), on the —— day of —— by B. and C., the Executors therein named) are hereby required to send particulars of such claims or demands in writing to us the undersigned as Solicitors for the said Executors on or before the —— day of —— (*n*), after which date the said Executors will proceed to distribute the assets of the said A. Deceased amongst the persons entitled thereto having regard only to the claims and demands of which notice shall then have been received, and will not as respects the property so distributed be liable to any person of whose claim they have not had notice at the time of such distribution. Dated, &c. X. and Y. [*address of office*], Solicitors for the said Executors.

---

(*l*) See T. Act, 1925, sect. 27, set out under General Remarks above. In the case of a notice by the trustees of a settlement or of a disposition on trust for sale, the Notice may begin thus: "Notice is hereby given that pursuant to the Trustee Act, 1925, all persons [&c.] against the property [of —] comprised in a Settlement [Disposition on trust for sale] dated &c. of which X. and Y. are the trustees" and continue with appropriate variations, substituting "the property" for "the assets of the said A. deceased."

(*m*) See J. Act, 1925 (c. 49), sects. 107—109, and 2nd Sched. See also 6th Sched., which repeals that part of the Administration of Justice Act, 1925, which dealt with this subject.

(*n*) Not less than two calendar months from the date of the notice or the last of the notices where more than one notice is given: see T. Act, 1925, sect. 27 (1).

## PARCELS.

### General Remarks.

Meaning of "parcels."

The word "parcel" literally means a small portion, but in legal parlance has acquired the meaning of a piece of land, and we still use the expression "piece or parcel of land." At the present time the term "parcels," in the language of conveyancers, has come to denote the particular description of any property, and it is in this sense it is used in this work.

The following Forms are specimens of the usual modes of describing land, or land and buildings. For descriptions of other kinds of property, see the Precedents throughout this work, or refer to the Index under "Parcels."

Use of plan.

The description of land is often a task of some difficulty, and should generally be accompanied by a ground plan indicating the area and boundaries. Where such plan is taken from a tithe map or ordnance survey map this fact should be stated, and as a precaution some such words as the following should be added, as, "by way only of identification," or "by way of identification and not of delimitation [limitation]." It was held in *Re Sansom and Narbeth*, [1910] 1 Ch. 741, that the purchaser was entitled to a plan on the conveyance, although no plan was referred to in the particulars or conditions of sale. Compare *Re Sparrow and James*, [1910] 2 Ch. 60. But cases can be imagined where it would be impracticable and unfair to the vendor that the property sold should be described by reference to a plan.

The risk that a vendor may run by reference to a plan was exemplified in *Eastwood* v. *Ashton*, [1915] A. C. 900, where, by inadvertence, there was included in the plan a strip of land to which the vendor was formerly entitled but which, by adverse possession for the necessary period, had been acquired by another. It was held that the reference to the plan prevailed and that, the strip being by such reference included in the conveyance, the vendor, under his implied covenant of the right to convey, was liable to the purchaser in damages for the breach. Compare this decision with *Watcham* v. *Att.-Gen. for East Africa*, [1919] A. C. 533, in which case it was held that where there is an ambiguity in the description, extrinsic evidence is admissible to explain and identify the actual parcels, even though the ambiguity is patent and the instrument containing such description is modern.

Meaning of "hereditaments."

In describing land, whether with or without buildings, the use of the word "hereditaments" is still retained as being the largest word of all in that kind (Co. Litt. 6a). The expression "leasehold hereditaments" is so far correct that, though a term of years is not a hereditament, yet it is an estate in a hereditament (Shep. Touch. (1820), 91). But see definition in L. P. Act, 1925, sect. 205 (1) (ix).

—of "tenement."

The word "tenement," which in its wide sense means what is holden, is occasionally used, but is practically obsolete, except in its narrower and popular sense of a house or part of a house.

—of "messuage."

The word "messuage" includes the building, curtilage (or yard), orchard and garden (Co. Litt. 5 b, n. 1, 56 b, n. 1, but *contra* as to garden, Keilwey, 57). If there is any appreciable quantity of land to pass with it, the word "land" should be added. By "cottage" is generally meant a small dwelling-house with no land, but it would seem that the curtilage and garden would pass (Shep. Touch. (1820), 94).

—of "cottage."

General words.

The technical meaning of these and other words is not now so important, having regard to the general words now implied by statute. As to "general words," see CONVEYANCES, General Remarks.

General rules in describing land.

The important thing is accurately to describe the salient features of the property, not, of course, as fully as in Particulars of Sale on a sale by auction, but sufficiently so as to show its nature, situation, boundaries, and area, giving, when known, the names of present and former occupants, and generally so that by the description it can be easily identified.

In the case of sale by private contract the description in the contract should be followed in the conveyance as far as practicable. Descriptions in former deeds may be useful guides. It may, however, be necessary to have a completely new description.

There is an infinite variety of possible descriptions, and the few following forms are given merely as specimens of the usual way of describing land or land and buildings.

---

## FORMS (*a*).

Reference to schedule generally.

I. ALL [AND SINGULAR] the hereditaments described in the —— Schedule hereto.

Land without buildings.

II. ALL THOSE pieces or parcels of land and hereditaments situate in the Parish of ——, in the County of ——, containing

(*a*) See General Remarks, above.

—— acres, —— roods, —— poles, or thereabouts, and bounded [*or* abutting], &c., and delineated (by way only of identification) on the Plan hereto and thereon coloured ——, particulars whereof are mentioned in the —— Schedule hereto (such Plan being taken from the Ordnance Survey —— edition) [*or* such Schedule and Plan being respectively extracts from the Tithe Apportionment and Map] formerly in the occupation of —— and now of ——.

III. ALL THAT messuage or dwelling-house, outbuildings, land and hereditaments known as —— situate [*&c., as in Form II.*]. Country house.

IV. ALL THAT messuage or farmhouse and farm with the cottages, buildings, land and hereditaments known as —— situate [*&c., as in Form II.*]. Farm.

V. ALL THAT messuage or dwelling-house and hereditaments known as No. —, —— Street, London, W.1. Town house.

VI. ALL THAT suite of rooms on the —— Floor of —— Buildings, —— Street, in the Parish of ——, in the City of London, Together with [*right to use common staircase, &c., and other rights as the case may be*]. City office [or flat].

## PARTITION.

### General Remarks.

Partition generally.

Land may still be divided in severalty by way of partition in the cases mentioned below, but the law as to undivided shares in land, and as to partition generally, has been materially affected by the new law.

A partition of land is, as formerly, effected by a conveyance in severalty of the portions allotted to the respective persons entitled, and so far as it purports to convey the legal estate must be by Deed (see L. P. Act, 1925, sect. 52 (1), which sub-section replaces sect. 3 of the R. P. Act, 1845).

The Partition Acts, 1539 (31 Hen. 8, c. 1), and 1540 (32 Hen. 8, c. 32), which conferred jurisdiction on the Court in certain cases to order a partition (see *Dodd* v. *Cattell*, [1914] 2 Ch. 1) are repealed by the L. P. Act, 1924 (10th Schedule), and the Partition Acts, 1868 and 1876, whereby the Court had power to order a sale instead of a partition, are repealed by the L. P. Act, 1925 (7th Schedule). These repeals are without prejudice to pending proceedings (see L. P. Act, 1925, 1st Sched., Pt. IV. sect. 1 (11) set out below).

As will be seen later, trustees for sale of land are given power to partition the land among persons absolutely entitled to the proceeds of sale.

Undivided shares in land.

In future "a legal estate is not capable of subsisting or of being created in an undivided share in land" (L. P. Act, 1925, sect. 1 (6)).

This enactment is amplified, as to shares subsisting at the commencement of the Act, by Parts IV. and V. of the First Schedule to the L. P. Act, 1925, and as to future dispositions, by sects. 34—38 of the same Act. The provisions as to settled land are supplemented by sect. 36 of the S. L. Act, 1925.

The short effect of these provisions is that where formerly persons would have held land legally and beneficially as joint tenants or tenants in common, they now have a corresponding interest in the proceeds of sale of the entirety, behind a trust for sale.

Land held in undivided shares before 1926.

The transitional provisions in Part IV. of the First Schedule to the L. P. Act, 1925, as to land held in undivided shares before 1926, are as follows :—

1. Where, immediately before the commencement of this Act,

land is held at law or in equity in undivided shares vested in possession, the following provisions shall have effect:— L. P. Act, 1925, 1st Sch. Pt. IV.

(1) If the entirety of the land is vested in trustees or personal representatives (whether subject or not to incumbrances affecting the entirety or an undivided share) in trust for persons entitled in undivided shares, then— Where entirety vested in trustees.

(a) if the land is subject to incumbrances affecting undivided shares or to incumbrances affecting the entirety which under this Act or otherwise are not secured by legal terms of years absolute, the entirety of the land shall vest free from such incumbrances in such trustees or personal representatives and be held by them upon the statutory trusts; and

(b) in any other case, the land shall be held by such trustees or personal representatives upon the statutory trusts;

subject in the case of personal representatives, to their rights and powers for the purposes of administration.

(2) If the entirety of the land (not being settled land) is vested absolutely and beneficially in not more than four persons of full age entitled thereto in undivided shares free from incumbrances affecting undivided shares, but subject or not to incumbrances affecting the entirety, it shall, by virtue of this Act, vest in them as joint tenants upon the statutory trusts. Where entirety vested beneficially.

(3) If the entirety of the land is settled land (whether subject or not to incumbrances affecting the entirety or an undivided share) held under one and the same settlement, it shall, by virtue of this Act, vest, free from incumbrances affecting undivided shares, and from incumbrances affecting the entirety, which under this Act or otherwise are not secured by a legal term of years absolute, in the trustees (if any) of the settlement as joint tenants upon the statutory trusts. Where entirety is settled land.

Provided that if there are no such trustees, then—

(i) pending their appointment, the land shall, by virtue of this Act, vest (free as aforesaid) in the Public Trustee upon the statutory trusts;

(ii) the Public Trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner, unless and until requested in writing to act by or on behalf of persons interested in more than an undivided half of the land or the income thereof;

(iii) after the Public Trustee has been so requested to act, and has accepted the trust, no trustee shall (except by an order of the court) be appointed in the place of the Public Trustee without his consent;

(iv) if, before the Public Trustee has accepted the trust, trustees of the settlement are appointed, the land shall, by virtue of this Act, vest (free as aforesaid) in them as joint tenants upon the statutory trusts;

(v) if, before the Public Trustee has accepted the trust, the persons having power to appoint new trustees are unable or unwilling to make an appointment, or if the tenant for life having power to apply to the court for the appointment of trustees of the settlement neglects to make the application for at least three months after being requested by any person interested in writing so to do, or if the tenants for life of

the undivided shares are unable to agree, any person interested under the settlement may apply to the court for the appointment of such trustees.

In other cases to vest in Public Trustee

(4) In any case to which the foregoing provisions of this Part of this Schedule do not apply, the entirety of the land shall vest (free as aforesaid) in the Public Trustee upon the statutory trusts:

Provided that—

(i) The Public Trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner, unless and until requested in writing to act by or on behalf of the persons interested in more than an undivided half of the land or the income thereof;

(ii) After the Public Trustee had been so requested to act, and has accepted the trust, no trustee shall (except by an order of the court) be appointed in the place of the Public Trustee without his consent;

(iii) Subject as aforesaid, any persons interested in more than an undivided half of the land or the income thereof may appoint new trustees in the place of the Public Trustee with the consent of any incumbrancers of undivided shares (but so that a purchaser shall not be concerned to see whether any such consent has been given) and vest the land in the persons so appointed (free as aforesaid) upon the statutory trusts; or such persons may (without such consent as aforesaid), at any time, whether or not the Public Trustee has accepted the trust, apply to the court for the appointment of trustees of the land, and the court may make such order as it thinks fit, and if thereby trustees of the land are appointed, the same shall by virtue of this Act, vest (free as aforesaid) in the trustees as joint tenants upon the statutory trusts;

(iv) If the persons interested in more than an undivided half of the land or the income thereof do not either request the Public Trustee to act, or (whether he refuses to act or has not been requested to act) apply to the court for the appointment of trustees in his place, within three months from the time when they have been requested in writing by any person interested so to do, then and in any such case, any person interested may apply to the court for the appointment of trustees in the place of the Public Trustee, and the court may make such order as it thinks fit, and if thereby trustees of the land are appointed the same shall by virtue of this Act, vest (free as aforesaid) in the trustees upon the statutory trusts.

(5) The vesting in the Public Trustee of land by virtue of this Part of this Schedule shall not effect any directions previously given as to the payment of income or of interest on any mortgage money, but such instructions may, until he accepts the trust, continue to be acted on as if no such vesting had been effected.

(6) The court or the Public Trustee may act on evidence given by affidavit or by statutory declaration as respects the undivided shares without investigating the title to the land.

All shares in same mortgagees.

(7) Where all the undivided shares in the land are vested in the same mortgagees for securing the same mortgage money and the rights of redemption affecting the land are the same as might have been subsisting if the entirety had been mortgaged by an owner before the undivided shares were created, the land shall, by virtue of this Act, vest in the mortgagees as joint tenants for a legal term of years absolute (in accordance with this Act) subject to cesser on redemption by the trustees for sale in whom the right of redemption is vested by this Act, and for the purposes of this Part of this Schedule the mortgage shall be deemed and incumbrance affecting the entirety.

Priorities not affected.

(8) This Part of this Schedule does not (except where otherwise expressly provided) prejudice incumbrancers whose incumbrances affect the entirety of the land at the commencement of this Act, but (if the nature of the incumbrance admits) the land shall vest in them for legal terms of years absolute in accordance with this Act but not so as to affect subsisting priorities.

Sale and consent of incumbrancer.

(9) The trust for sale and powers of management vested in persons who hold the entirety of the land on trust for sale shall, save as hereinafter mentioned, not be exercisable without the consent of any incumbrancer, being of full age, affected whose incumbrance is divested by this Part of this Schedule, but a purchaser shall not be concerned to see or inquire whether any such consent has been given, nor, where the incumbrancer is not in possession, shall any such consent be required if, independently of this Part of this Schedule or any enactment replaced thereby the transaction would have been binding on him, had the same been effected by the mortgagor.

Contract for sale before Act.

(10) This Part of this Schedule does not apply to land in respect of which a subsisting contract for sale (whether made under an order in a partition action or by or on behalf of all the tenants in common or coparceners) is in force at the commencement of this Act if the contract is completed in due course (in which case title may be made in like manner as if this Act, and any enactment thereby replaced, had not been passed), nor to the land in respect of which a partition action is pending at such commencement if an order for a partition or sale is subsequently made in such action.

Proceedings pending under Partition Acts.

(11) The repeal of the enactments relating to partition shall operate without prejudice to any proceedings thereunder commenced before the commencement of this Act, and to the jurisdiction of the court to make any orders in reference thereto, and subject to the following provisions, namely:—

(i) In any such proceedings, and at any stage thereof, any person or persons interested individually or collectively in more than one half of the land to which the proceedings relate, may apply to the court for an order staying such proceedings;

(ii) The court may upon such application make an order staying the proceedings as regards the whole or any part, not being an undivided share, of the land;

(iii) As from the date of such order the said enactments shall cease to apply to the land affected by the order and the provisions of this Part of this Schedule shall apply thereto;

(iv) The court may by such order appoint trustees of the

land and the same shall by virtue of this Act vest (free as aforesaid) in the trustees as joint tenants upon the statutory trusts;

(v) The court may order that the costs of the proceedings and of the application shall be raised by the trustees, by legal mortgage of the land or any part thereof, and paid either wholly or partially into court or to the trustees;

(vi) The court may act on such evidence as appears to be sufficient, without investigating the title to the land.

(12) In this Part of this Schedule "incumbrance" does not include land tax, tithe rentcharge, or any similar charge on the land not created by an instrument.

Shares falling in after Act.

2. Where undivided shares in land, created before the commencement of this Act, fall into possession after such commencement, and and the land is not settled land when the shares fall into possession, the personal representatives (subject to their rights and powers for purposes of administration) or other estate owners in whom the entirety of the land is vested shall, by an assent or a conveyance, give effect to the foregoing provisions of this Part of this Schedule in like manner as if the shares had fallen into possession immediately before the commencement of this Act, and in the meantime the land shall be held on the statutory trusts.

3. This Part of this Schedule shall not save as hereinafter mentioned apply to party structures and open spaces within the meaning of the next succeeding Part of this Schedule.

Party structures and open spaces.

**The provisions in Part V. of the First Schedule to the L. P. Act, 1925, as to party structures and open spaces, referred to in sect. 3 of Part IV. of that Schedule (above), are as follows :—**

L. P. Act, 1925, 1st Sch., Pt. V.

1. Where, immediately before the commencement of this Act, a party wall or other party structure is held in undivided shares, the ownership thereof shall be deemed to be severed vertically as between the respective owners, and the owner of each part shall have such rights to support (*a*) and of user over the rest of the structure as may be requisite for conferring rights corresponding to those subsisting at the commencement of this Act.

2. Where, immediately before the commencement of this Act, an open space of land (with or without any building used in common for the purposes of any adjoining land) is held in undivided shares, in right whereof each owner has rights of access and user over the open space, the ownership thereof shall vest in the Public Trustee on the statutory trusts which shall be executed only with the leave of the court, and, subject to any order of the court to the contrary, each person who would have been a tenant in common shall, until the open space is conveyed to a purchaser, have rights of access and user over the open space corresponding to those which would have subsisted if the tenancy in common had remained subsisting.

3. Any person interested may apply to the court for an order declaring the rights and interests under this Part of this Schedule, of the persons interested in any such party structure or open space, or generally may apply in relation to the provisions of this Part of this Schedule, and the court may make such order as it thinks fit.

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(*a*) As to mutual rights of support, see *Sack* v. *Jones*, [1925] Ch. 235.

As to instruments executed after 1925, the law as to undivided shares in and joint ownership of land is now regulated by the following provisions of the L. P. Act, 1925, which define the effect of future dispositions of land to tenants in common, and as to joint tenancies held beneficially—and are as follows :— Future dispositions to tenants in common and as to beneficial joint tenancies.

**34.**—(1) An undivided share in land shall not be capable of being created except as provided by the Settled Land Act, 1925, or as hereinafter mentioned. L. P. Act, 1925, s. 34, tenants in common.

(2) Where, after the commencement of this Act, land is expressed to be conveyed to any persons in undivided shares and those persons are of full age, the conveyance shall (notwithstanding anything to the contrary in this Act) operate as if the land had been expressed to be conveyed to the grantees, or if there are more than four grantees to the four first named in the conveyance, as joint tenants upon the statutory trusts hereinafter mentioned and so as to give effect to the rights of the persons who would have been entitled to the shares had the conveyance operated to create those shares :

Provided that where the conveyance is made by way of mortgage the land shall vest in the grantees or such four of them as aforesaid for a term of years absolute (as provided by this Act) as joint tenants subject to cesser on redemption in like manner as if the mortgage money had belonged to them on a joint account, but without prejudice to the beneficial interests in the mortgage money and interest.

(3) A devise bequest or testamentary appointment, coming into operation after the commencement of this Act, of land to two or more persons in undivided shares shall operate as a devise bequest or appointment of the land to the trustees (if any) of the will for the purposes of the Settled Land Act, 1925, or, if there are no such trustees, then to the personal representatives of the testator, and in each case (but without prejudice to the rights and powers of the personal representatives for purposes of administration) upon the statutory trusts hereinafter mentioned.

(4) Any disposition purporting to make a settlement of an undivided share in land shall only operate as a settlement of a corresponding share of the net proceeds of sale and of the rents and profits until sale of the entirety of the land.

**35.** For the purposes of this Act land held upon the "statutory trusts" shall be held upon the trusts and subject to the provisions following, namely, upon trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts, and subject to such powers and provisions, as may be requisite for giving effect to the rights of the persons (including an incumbrancer of a former undivided share or whose incumbrance is not secured by a legal mortgage) interested in the land. —s. 35, "statutory trusts."

**36.**—(1) Where a legal estate (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants, the same shall be held on trust for sale, in like manner as if the persons beneficially entitled were tenants in common, but not so as to sever their joint tenancy in equity. —s. 36, joint tenancies.

(2) No severance of a joint tenancy of a legal estate, so as to create a tenancy in common in land, shall be permissible, whether by operation of law or otherwise, but this subsection does not affect the right of a joint tenant to release his interest to the other joint tenants, or the right to sever a joint tenancy in an equitable interest whether or not the legal estate is vested in the joint tenants:

Provided that where a legal estate (not being settled land) is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire or do such other acts or things as would, in the case of personal estate, have been effectual to sever the tenancy in equity, and thereupon under the trust for sale affecting the land the net proceeds of sale, and the net rents and profits until sale, shall be held upon the trusts which would have been requisite for giving effect to the beneficial interests if there had been an actual severance.

(3) Without prejudice to the right of a joint tenant to release his interest to the other joint tenants no severance of a mortgage term or trust estate, so as to create a tenancy in common, shall be permissible.

Tenancy by entireties abolished.

By sect. 37 of the L. P. Act, 1925, a husband and wife, as to the acquisition of any property under dispositions made after 1925, are to be treated as two persons, and by Part VI. of the First Schedule to the same Act every tenancy by entireties existing on the 1st January, 1926, is (without prejudice to any beneficial interest) converted into a joint tenancy.

Party structures.

Where, under a disposition or other arrangement, a wall or other structure is or expressed to be made a party-wall or structure, and would, if permissible, have created a tenancy in common, sect. 38 of the L. P. Act, 1925, contains provisions similar to those as to party-walls and structures in Part V. of the First Schedule to that Act (set out above).

Settled land held in undivided shares.

As to settled land held in trust for persons entitled in possession in undivided shares, the provisions of the S. L. Act, 1925, sect. 36, apply. The section is as follows :—

S. L. Act, 1925, s. 36.

**36.**—(1) If and when, after the commencement of this Act, settled land is held in trust for persons entitled in possession under a trust instrument in undivided shares, the trustees of the settlement (if the settled land is not already vested in them) may require the estate owner in whom the settled land is vested (but in the case of a personal representative subject to his rights and powers for purposes of administration), at the cost of the trust estate, to convey the land to them or assent to the land vesting in them as joint tenants, and in the meantime the land shall be held on the same trusts as would have been applicable thereto if it had been so conveyed to or vested in the trustees.

(2) If and when the settled land so held in trust in undivided shares is or becomes vested in the trustees of the settlement, the land shall be held by them (subject to any incumbrances affecting the settled land which are secured by a legal mortgage, but freed

from any incumbrances affecting the undivided shares or not secured as aforesaid, and from any interests, powers and charges subsisting under the trust instrument which have priority to the trust for the persons entitled to the undivided shares) upon the statutory trusts.

(3) If the estate owner refuses or neglects for one month after demand in writing to convey the settled land so held in trust in undivided shares in manner aforesaid, or if by reason of his being outside the United Kingdom or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the conveyance cannot otherwise be made, or cannot be made without undue delay or expense, the court may, on the application of the trustees of the settlement, make an order vesting the settled land in them on the statutory trusts.

(4) An undivided share in land shall not be capable of being created except under a trust instrument or under the Law of Property Act, 1925, and shall then only take effect behind a trust for sale.

(5) Nothing in this section affects the priority inter se of any incumbrances whether affecting the entirety of the land or an undivided share.

(6) For the purposes of this section land held upon the statutory trusts shall be held upon the trusts and subject to the provisions following, namely, upon trust to sell the same, with power to postpone the sale of the whole or any part thereof, and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale, after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the rights of the persons interested in the settled land.

(7) The provisions of this section bind the Crown.

Powers of trustees for sale.

As all undivided shares in land must now consist of shares in money arising under a trust for sale, it is important to the holders of such shares to know what are the powers of the trustees, and especially, when such shares are vested absolutely, what power the trustees have to partition the land in severalty among them.

Of the provisions regulating dispositions on trust for sale generally, sect. 28 of the L. P. Act, 1925, is the important section, as defining their powers, which, as will be seen from sub-sect. (3), include an express power to partition. This section is as follows :—

L. P. Act, 1925, s. 28. Trustees for sale to have S. L. Act powers.

**28.**—(1) Trustees for sale shall, in relation to land or to manorial incidents and to the proceeds of sale, have all the powers of a tenant for life and the trustees of a settlement under the Settled Land Act, 1925, including in relation to the land the powers of management conferred by that Act during a minority: and (subject to any express trust to the contrary) all capital money arising under the said powers shall, unless paid or applied for any purpose authorised by the Settled Land Act, 1925, be applicable in the

same manner as if the money represented proceeds of sale arising under the trust for sale.

All land acquired under this subsection shall be conveyed to the trustees on trust for sale.

The powers conferred by this subsection shall be exercised with such consents (if any) as would have been required on a sale under the trust for sale, and when exercised shall operate to overreach any equitable interests or powers which are by virtue of this Act or otherwise made to attach to the net proceeds of sale as if created by a trust affecting those proceeds.

Rents, &c., until sale to go as income of proceeds.

(2) Subject to any direction to the contrary in the disposition on trust for sale or in the settlement of the proceeds of sale, the net rents and profits of the land until sale, after keeping down costs of repairs and insurance and other outgoings shall be paid or applied, except so far as any part thereof may be liable to be set aside as capital money under the Settled Land Act, 1925, in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested.

Power to partition when shares vested.

(3) Where the net proceeds of sale have under the trusts affecting the same become absolutely vested in persons of full age in undivided shares (whether or not such shares may be subject to a derivative trust) the trustees for sale may, with the consent of the persons, if any, of full age, not being annuitants, interested in possession in the net rents and profits of the land until sale:—

(a) partition the land remaining unsold or any part thereof; and

(b) provide (by way of mortgage or otherwise) for the payment of any equality money;

and, upon such partition being arranged, the trustees for sale shall give effect thereto by conveying the land so partitioned in severalty (subject or not to any legal mortgage created for raising equality money) to persons of full age and either absolutely or on trust for sale or, where any part of the land becomes settled land, by a vesting deed, or partly in one way and partly in another in accordance with the rights of the persons interested under the partition, but a purchaser shall not be concerned to see or inquire whether any such consent as aforesaid has been given:

Provided that—

(i) If a share in the net proceeds belongs to a lunatic or defective, the consent of his committee or receiver shall be sufficient to protect the trustees for sale:

(ii) If a share in the net proceeds is affected by an incumbrance the trustees for sale may either give effect thereto or provide for the discharge thereof by means of the property allotted in respect of such share, as they may consider expedient.

As to share of infant.

(4) If a share in the net proceeds is absolutely vested in an infant, the trustees for sale may act on his behalf and retain land (to be held on trust for sale) or other property to represent his share, but in other respects the foregoing power shall apply as if the infant had been of full age.

(5) This section applies to dispositions on trust for sale coming into operation either before or after the commencement or by virtue of this Act.

Undivided shares in registered land.

As to cases where, on the 1st January, 1926, the entirety of land held in undivided shares is registered, and the persons entitled to the several undivided shares are registered as proprietors, or where an undivided share in land is registered but the entirety of the land is not registered on the 1st January, 1926, see L. R. Act, 1925, sect. 78.

Stamp duty on equality money for partition.

As to equality money for partition, the Stamp Act, 1891, sect. 73, provides that where the consideration paid for equality on a partition exceeds £100, the instrument is to be charged with the same *ad valorem* duty as on a conveyance on sale. The stamp in any other case is ten shillings.

Undivided shares in chattels.

As to chattels held in undivided shares a new jurisdiction is conferred on the Court by sect. 188 of the L. P. Act, 1925, which is as follows :—

L. P. Act, 1925, s. 188.

> **188.** Where any chattels belong to persons in undivided shares, the persons interested in a moiety or upwards may apply to the court for an order for division of the chattels or any of them, according to a valuation or otherwise, and the court may make such order and give any consequential directions as it thinks fit.

The term "chattels" is not defined in this Act, but is probably intended to be limited to chattels personal passing by delivery.

The power of the Court is to make an order for "division," and it may be questioned whether a "sale" is authorised, unless "consequential directions" may include a sale, and so empower the Court to divide the proceeds. The power to divide chattels in specie will, it is thought, be rarely exercised, and would better have been left to the persons themselves.

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## PRECEDENT.

Precedent of free settled and mortgaged shares.

### Partition Deed *of* Freeholds *where one share is* Free, *one is* Settled *and the third is* Mortgaged (*a*).

Parties.

THIS PARTITION DEED made the —— day of ——, between the Public Trustee of the first part, A., of, &c., of the second part, B., of, &c., of the third part, X., of, &c., and Y., of, &c. (herein called "the settlement trustees"), of the fourth part,

(*a*) In this Precedent it is supposed that the three persons had become entitled before 1926 each to one third undivided share in fee-simple, and that one of them (also before 1926) had settled his share upon trust for sale, and that another (also before 1926) had mortgaged his share in fee simple. The other's share was free and unincumbered. One of these cases, it is thought, is not unlikely to occur, and this form may be of use in one or other of the circumstances supposed. As to the powers of the Public Trustee, see p. 424.

PRECEDENT

OF FREE SETTLED AND MORTGAGED SHARES.

C., of, &c., of the fifth part and D., of, &c. (herein called "the mortgagee"), of the sixth part: WHEREAS under the Will dated &c., of the late M., deceased, who died on the —— day of ——, and whose said Will was proved on the —— day of —— in the —— Registry by the executors therein named, the freehold hereditaments described in the First, Second and Third Schedules hereto were devised to the said A., B. and C., as tenants in common in equal shares, and the personal representatives of the said M., deceased, assented to the said devise.

Recital of devise to three persons in common, and as to dealings with two of the shares;

AND WHEREAS by a Conveyance dated, &c. [*before* 1926] and made between [*parties*] the said B. conveyed his one third undivided share in the said hereditaments (herein called "the settled share"), to the settlement trustees upon trust after his then intended marriage (since duly solemnised) to sell the settled share and hold the proceeds and the rents and profits until sale upon the trusts, and subject to the powers and provisions declared by a Deed (herein called "the settlement") of even date with, but executed immediately after the said conveyance, under which last mentioned deed the said rents and profits in respect of the settled share are now payable to the said B. during his life. AND WHEREAS by a Mortgage (herein called "the mortgage") dated, &c. [*before* 1926] and made between the said C., of the one part, and the mortgagee of the other part, the said C. conveyed his one third undivided share in the said hereditaments (herein called "the mortgaged share") to the mortgagee in fee-simple, by way of mortgage for securing payment of the sum of £100 with interest as therein mentioned. AND WHEREAS immediately before the commencement of the L. P. Act, 1925, the said A. was beneficially entitled to a one third undivided share in the said hereditaments (herein called "the free share") for an estate in fee-simple in possession, free from incumbrances, and the settlement trustees were entitled to the settled share in fee-simple in possession upon trust for sale as hereinbefore mentioned, and the mortgagee was entitled to the mortgaged share in fee simple in possession subject to redemption.

—that entirety is vested in Public Trustee;

AND WHEREAS by virtue of the said Act the entirety of the said hereditaments is now vested in the Public Trustee for an estate in fee-simple free from incumbrances, upon the statutory trusts as defined by that Act, and the Public Trustee has been requested in writing by all the other parties hereto to act in the trust, and has accepted the trust, and with the consent of all the other parties hereto has agreed to exercise the power to partition the said hereditaments conferred on him by the said Act.

—of allotment;

AND WHEREAS the hereditaments described in the First Schedule hereto have been allotted to the said A. in respect of the free share, and the hereditaments

PRECEDENT OF FREE SETTLED AND MORTGAGED SHARES.

described in the Second Schedule hereto have been allotted to the settlement trustees in respect of the settled share, and the hereditaments described in the Third Schedule hereto have been allotted to the said C., subject to a charge by way of legal mortgage, for securing payment to the mortgagee of the principal money and the interest due and to accrue due under the mortgage. AND WHEREAS it has been agreed that the said A. shall pay the sum of £— for equality of partition [in two equal parts], that is to say, the sum of £— to the settlement trustees, and the sum of £— to the mortgagee in part discharge of the money due under the mortgage. AND WHEREAS there now remains owing to the mortgagee on the security of the mortgage the principal sum of £— with current interest thereon, but on payment hereunder of the said sum of £— for equality of partition, the principal sum due will be reduced to the sum of £—. NOW THIS DEED WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of £—, paid by the said A. to the settlement trustees (the receipt whereof they hereby acknowledge) and of the sum of £— paid by the said A. at the request of the said C. to the mortgagee (the receipt and payment whereof the mortgagee and the said C. hereby respectively acknowledge) and of the premises :—

—money for equality.

Partition.

1. The Public Trustee AS TRUSTEE Doth hereby convey unto the said A., in respect of the free share and all other (if any) the share or interest to which he is entitled in the proceeds of sale of all the said hereditaments by virtue of the said Will of the said M., deceased, and of the Law of Property Act, 1925 : ALL the hereditaments described in the First Schedule hereto : TO HOLD unto the said A. in fee-simple, to be henceforth held by him in severalty.

As to free share.

2. The Public Trustee AS TRUSTEE Doth hereby, with the consent of the said B., convey unto the settlement trustees in respect of the settled share and all other (if any) the share or interest to which the settlement trustees are entitled as trustees, in the proceeds of sale of all the said hereditaments, by virtue of the said Will of the said M., deceased, and of the settlement and of the Law of Property Act, 1925 : ALL the hereditaments described in the Second Schedule hereto : TO HOLD unto the settlement trustees in fee-simple, to be henceforth held by them in severalty, Upon trust to sell the same and hold the proceeds and rents and profits until sale upon the trusts and subject to the powers and provisions contained in the settlement.

As to settled share.

3. The Public Trustee AS TRUSTEE Doth hereby, with the consent of the mortgagee, convey unto the said C. in respect of the mortgaged share and all other (if any) the share or interest to

As to mortgaged share.

PRECEDENT — OF FREE SETTLED AND MORTGAGED SHARES.

which the said C. is entitled subject to the mortgage in the proceeds of sale of the entirety of the said hereditaments by virtue of the said Will of the said M., deceased, and of the mortgage and of the Law of Property Act, 1925 : ALL the hereditaments described in the Third Schedule hereto : TO HOLD unto the said C., in fee-simple to be henceforth held by him in severalty : But subject to the mortgage so far as the same is still subsisting and to the charge by way of legal mortgage hereinafter contained.

Legal charge by owner of mortgaged share.

4. The said C., by way of substituted security, Doth hereby AS BENEFICIAL OWNER charge by way of legal mortgage ALL the hereditaments described in the Third Schedule hereto with the payment to the mortgagee of all principal money now due, and all interest due and to become due thereon, and all other money payable on the security of the mortgage and this charge, as if the powers and provisions therein contained so far as applicable were herein repeated [and subject also to the powers and provisions following :—*Here add other provisions as required: see* MORTGAGES, *Precedents I. and IV., &c.*]. [*Certificate if the total equality money is more than* £100, *but not more than* £500, p. 149]. IN WITNESS, &c. (*b*).

FIRST SCHEDULE—Hereditaments in respect of free share.

SECOND SCHEDULE—Hereditaments in respect of settled share.

THIRD SCHEDULE—Hereditaments in respect of mortgaged share.

(*b*) The Partition Deed should be executed in triplicate, especially having regard to the mortgaged share. If, however, there is only one deed, the party retaining it should give the statutory acknowledgment, and, where appropriate, the undertaking to the other parties. Some arrangement would have to be made as to the custody of the documents relating to the common title. Perhaps in this case the parties might agree that they should be retained by the Public Trustee, who would then give the statutory acknowledgment.

## PARTNERSHIP ARTICLES.

### General Remarks.

Law of partnership.

The principal statutes now affecting the law of partnership are the Partnership Act, 1890, the Limited Partnerships Act, 1907, the Companies Act, 1908, the Bankruptcy Act, 1914, and the Registration of Business Names Act, 1916.

The principles involved in earlier judicial decisions were to a large extent incorporated in the Partnership Act, 1890, which thus consolidated the law.

Partnership Act, 1890.

By this Act "partnership" is defined as the relation which subsists between persons carrying on a business with a view to profit (sect. 1 (1)); and "business" is defined (sect. 45) as including every trade, occupation, or profession. Persons who have entered into partnership with one another are for the purposes of the Act called collectively a "firm," and the name under which their business is carried on is called the "firm-name."

After dealing with the nature of a partnership (sects 1 to 4), the Act deals with the relations of partners to persons dealing with them (sects. 5 to 18), the relations of partners to one another (sects. 19 to 31), and the dissolution of partnership and its consequences (sects. 32 to 44); and the whole Act should be carefully studied by the draftsman before preparing draft articles.

Parol agreement.

No special form of words is necessary in an agreement for a general partnership, which can be constituted without any written agreement at all, apart from some special statutory enactment, as, for example, the Statute of Frauds (see p. 85, and *Keen* v. *Mear*, [1920] 2 Ch. 574), or other legislative provision (see *Pate* v. *Pate*, [1915] A. C. 1100, an appeal from Ceylon, where an Ordinance required writing in certain cases). As to the procedure in an action against a firm where a person denies that he is a partner, see *Weir & Co.* v. *McVicar & Co.*, [1925] 2 K. B. 127.

Partners agents for each other.

As the principle of law underlying the relation of partnership is that of agency, and every partner is an agent of the firm and his other partners for the purpose of the business of the partnership (Partnership Act, 1890, sect. 5), the fact that one of the members of a firm takes no active part himself, or is a sleeping partner, does not diminish his liability as an undisclosed principal. Non-disclosure of the fact that he was a member of

the firm was immaterial, and now, under the Registration of Business Names Act, 1916, his name should appear with those of his co-partners. Difficulties as to liability, however, may arise in a joint adventure in a single transaction (see *Lloyds Bank* v. *Swiss Bankverein* (1912), 107 L. T. 309), and it is doubtful whether the Act requires registration of names in such a case.

Limited partnerships.

By the Limited Partnerships Act, 1907, a new kind of partnership was introduced which may be described as midway between an ordinary partnership and a company incorporated under the Companies Acts. In partnerships under this Act there are two kinds of partners—"general partners," whose liability is unlimited, and "limited partners," whose liability is limited by the amount of capital which they have contributed to the business. Little use has been made of this Act, although, perhaps, it might be usefully adopted in some cases—for example, where a partner dies, and the executors are authorised to continue the share in the business, although they do not thereby necessarily become partners (see Lindley (1924), pp. 448, 726).

As to the winding-up of limited partnerships, see Companies Act, 1908, sect. 268 (1) (vii); see also Bankruptcy Act, 1914, sect. 127, and as to the circumstances under which, owing to the misconduct of the general partner, the limited partner was held to be entitled to a compulsory winding-up of the limited partnership, see *Re Hughes*, [1911] 1 Ch. 342.

As to the stamp duty payable on the contribution by a limited partner, see the Limited Partnerships Act, 1907, as amended by the Finance Act, 1920, sect. 39 (1) (c).

Prohibition of large partnerships.

The formation of large partnerships is restricted by the Companies Act, 1908 (see sects. 1, 286, and Sixth Schedule).

Bankruptcy of partners.

On the bankruptcy of the partners, payment of joint and separate debts is regulated by sect. 33 (6) of the Bankruptcy Act, 1914 (see also sects. 114—119).

Registration of Business Names Act, 1916.

The Registration of Business Names Act, 1916, provides for the registration of firms having a place of business in the United Kingdom and carrying on business under a business name which does not consist of the true surnames of all partners without any addition other than the true Christian names or initials of such Christian names (sect. 1 (a)). All the initials of the Christian name must be added : *Brown* v. *Thomas*, [1923] W. N. 6.

Default in compliance with the provisions of the Act may suspend the rights of the partners of enforcing contracts (see sect. 8 and *O'Connor* v. *Ralston*, [1920] 3 K. B. 451); while a person making a false statement is liable on conviction to fine or imprisonment (see sect. 9 and *Solicitor to Board of Trade* v. *Ernest*, [1920] 1 K. B. 816).

A partnership firm still, however, signifies, as expressed in the firm-name, the persons who are actually members of the partnership, and the general law of partnership is not affected by the requirements of this Act, otherwise than as expressly so provided : see *Re Frank Hill*, [1921] 2 K. B. 831, where all registered partners obtained judgment, and though one retired, yet the rights of the other partners were not affected.

As to the framing of partnership deeds, see Dav. Prec. Conv. (1878), vol. v., Pt. ii. 303—338, and as to the general law, see Lindley (1924), and Pollock (1915), on Partnership. Partnership deeds.

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## PRECEDENTS.

### I.

ARTICLES *of* PARTNERSHIP.

PRECEDENT I. — ARTICLES OF PARTNERSHIP.

ARTICLES OF PARTNERSHIP, made, &c., BETWEEN A., of, &c., of the one part, and B., of, &c., of the other part, WHEREBY it is agreed as follows :

I. The said A. and B. shall be partners in the business of ——. Agreement for partnership.

II. The partnership shall begin from the —— day of —— [*or* date hereof], and shall continue for the term of —— years, until the death of either partner, or until determined by either partner giving not less than six calendar months' previous notice in writing to the other of them, or leaving such notice at the place where the said business shall for the time being be carried on (*a*). Duration of partnership.

III. The firm-name of the partnership shall be ——. Firm-name (*b*).

IV. The business of the partnership shall be carried on at ——, and the bankers of the partnership shall be the —— Bank, into which bank all money of the partnership not required for current expenses shall be paid to the credit of the partnership account, and all cheques drawn in the name of the firm shall be signed by both partners. Place of business and bank.

V. Both partners will at all times diligently employ themselves in the business of the partnership, but each partner shall be entitled to —— weeks' holiday in every year. Partners to attend to business;

VI. Neither partner shall, either directly or indirectly, engage in any business except the business of the partnership, and upon account thereof. —not to be engaged in other business;

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(*a*) See *Moss* v. *Elphick*, [1910] 1 K. B. 846, where a partnership to be terminated by "mutual arrangement" was held to be a life partnership until so terminated. As to giving notices, see p. 413.

(*b*) As to registration under the Registration of Business Names Act, 1916, see General Remarks, above.

PRECEDENT I.

ARTICLES OF PARTNERSHIP.

VII. Neither partner shall take any apprentice, or hire or dismiss any clerk, traveller, workman, or servant, without the consent of the other partner.

—nor hire or dismiss servant.

VIII. The capital of the partnership shall consist of the sum of £——, to be brought in by the partners in equal shares.

Capital of partnership;

IX. The said capital and the profits arising therefrom (including the premiums to be paid for any apprentice to be taken by either of the partners) (*c*), shall (subject as is hereinafter mentioned) be employed in the said business.

—to be used in business.

Outgoings of partnership how to be paid.

X. The rent of the houses and buildings in —— aforesaid, or of any other buildings where the said business shall be carried on, and the cost of repairs and alterations, and all rates, taxes, payments for insurance, and other outgoings whatsoever in respect of the same, and the wages and remuneration of all persons employed in the said business, and all other money to become payable on account of the said business, and all losses which shall happen in the same, shall be paid out of the capital of the partnership and the profits arising therefrom, or, if the same shall be deficient, by the partners in equal shares.

Both partners to sign securities for money.

XI. When there shall be occasion to give any security or undertaking for the payment of money on account of the partnership (except when the contrary shall, in the common course of business, be unavoidable), the same shall be signed by both partners.

As to security signed by one alone.

XII. If (except in the case aforesaid) either partner shall give any such security or undertaking which shall not be signed by the other partner, the same shall be deemed to be given on the separate account of the partner so giving it, and he shall satisfy the same out of his separate estate, and shall indemnify the other partner from all expenses on account thereof.

As to lending or giving credit.

XIII. If either partner shall lend any of the money or deliver upon credit any of the goods of the partnership to any person or persons whom the other partner shall previously, in writing, have forbidden him to trust, the partner so lending or delivering shall pay to the partnership so much ready money as shall be equal to the full amount or value of the money or goods which he shall so lend or deliver.

Not to enter into any contract above a certain amount.

XIV. If either partner shall buy any goods or articles exceeding the value of £——, without the previous consent in writing of the other, the other partner shall have the option either to

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(*c*) Add here if desired "and the salary or other benefit derived by either [any] partner from any office held during the partnership." In *Carlyon-Britton* v. *Lumb* (1922), 38 T. L. R. 298, this was held to include pay as officer in the Army.

take such goods or articles on account of the partnership, or to let the same remain the separate property of the partner who shall have so bought the same.

Not to become surety.

XV. Neither partner shall, without the previous consent in writing of the other, enter into any bond or become bail, surety, or security for any person, or subscribe any policy of insurance, or do, or willingly suffer to be done, anything whereby the capital or property of the partnership may be extended or taken in execution.

Each partner to indemnify partnership against his private debts.

XVI. Each partner shall punctually pay his separate debts, and indemnify the other partner, and the capital and property of the partnership, against the same and all expenses on account thereof.

Books of account to be kept.

XVII. Books of account shall be kept by the partners, and proper entries made therein of all the sales, purchases, receipts, payments, engagements, transactions, and property of the partnership; and the said books of account, and all securities, papers, and writings of the partnership, shall be kept at the counting-house in —— aforesaid, or at such other place where the business shall be carried on, and each partner shall have free access at all times to examine and copy the same (*d*).

Annual accounts and valuations to be made.

XVIII. On the —— day of ——, in the year ——, and on the —— day of —— in every succeeding year, a general account shall be made and taken by the partners of all the sales, purchases, receipts, payments, engagements, and transactions, of the partnership during the then preceding year, and of all the capital, property, engagements, and liabilities for the time being of the partnership; and the said general account shall, immediately after the same shall be made and taken, be written into two books, and be signed in each such book by each partner; and after such signature, each partner shall keep one of the said books, and shall be bound by every such account, except that, if any manifest error be found therein by either partner, and signified to the other partner within twelve months after the same shall have been so signed by both of them, such error shall be rectified.

Partners to share net profits equally.

XIX. The partners shall be entitled to the net profits arising from the said business, and remaining after the payments hereinbefore directed to be made thereout, in equal shares (*e*).

Partners may draw certain quarterly sums in advance (*f*).

XX. In each year each partner may draw out of the net profits of the said business, by equal quarterly payments, on the usual quarter-days [*or* "on the —— day of ——, &c."], the

(*d*) Compare Partnership Act, 1890, sect. 24 (9).
(*e*) Compare Partnership Act, 1890, sect. 24 (1).
(*f*) See an alternative form at p. 442.

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sum of £—— for his separate use; but if, at the end of any year, it shall appear, upon taking the general annual account, that the net profits of such year shall not have amounted to the sum of £—— [*the total yearly amount of the quarterly allowances to both partners*], in such case, immediately after such general annual account shall have been taken, each partner shall repay to the partnership the excess (if any) of the amount of the sum which he shall actually have received in respect of such quarterly payments over the sum which he shall have been entitled to receive as his share of the net profits of the said business.

On expiration of partnership, accounts to be taken and residue divided.

XXI. Within six calendar months after the expiration of the partnership, otherwise than by the death of either partner, a general account shall be taken by the partners of all the capital, property, engagements, and liabilities of the partnership, and immediately after such last-mentioned account shall have been so taken and settled, the partners shall forthwith make due provision for the payment of the debts, and meeting all other liabilities of the partnership, and subject thereto all the property of the partnership shall be divided between the partners in equal shares, and such instruments in writing shall be executed by the partners respectively for facilitating the getting in of the debts due to the partnership, and for vesting the whole right in the said respective shares of the said property in the partner to whom the same respectively shall upon such division belong, and for releasing to each other all claims on account of the partnership, and otherwise as are usual in cases of the like nature.

On death of one partner share to be paid to his representatives,

XXII. If either partner shall die during the partnership, his personal representatives shall, if such death shall happen before the day hereinbefore appointed for the first general annual account, be entitled to the capital brought in by such deceased partner; or, if the same shall happen after the day hereinbefore appointed for the first annual account, shall be entitled to such sum of money as the share of the deceased partner of the capital and property of the partnership (*g*) shall, upon the then last general annual account, amount to, or as such share would have amounted to in case such account had been taken on the —— day of —— [*the proper day for taking such account*], immediately preceding such death; and in either case the personal representatives of the deceased partner shall also be entitled to an allowance, after the rate of — per cent. per annum, upon

—with allowance in lieu of profits; and security to be given by surviving partner.

(*g*) As to the goodwill, see *Re David and Matthews*, [1899] 1 Ch. 378; *Hordern* v. *Hordern*, [1910] A. C. 465. The assets should be taken at their fair value to the firm at the date of the account and not at their book value; *Cruikshank* v. *Sutherland* (1923), 92 L. J. Ch. 136; 128 L. T. 449.

the capital, or share of capital, and property (as the case may be), of such deceased partner, in lieu of profits, from the commencement of the partnership, or from the then last general annual account (as the case may be), to the time of such death; and the surviving partner shall pay such allowance in lieu of profits on demand, and shall, within —— next after the death of the deceased partner, execute and deliver to his executors or administrators a bond in a sufficient penalty or covenant for the payment of the said principal sum to which they shall become entitled as aforesaid, with interest thereon after the rate of — per cent. per annum from such death, in manner following (that is to say), one third part of such principal sum, with the interest on the same third part, at the end of six calendar months from the date of such bond or covenant; one other third part with interest thereon at the end of twelve calendar months from the date of such bond or covenant; and the remaining third part, with interest thereon, at the end of eighteen calendar months from the date of such bond or covenant.

Surviving partner to indemnify against partnership debts (*h*).

XXIII. The surviving partner shall indemnify the personal representatives and the estate of the deceased partner against the debts and liabilities of the partnership at or after such death, and all expenses on account of the same, and the personal representatives of the deceased partner shall release and assign unto the surviving partner all their share, right, title, and interest in the goodwill, money, stock-in-trade, debts, and effects of the partnership, and empower him, as much as in them lies, to recover and receive the same.

Arbitration clause (*i*).

XXIV. Whenever any difference shall arise between the partners or their respective personal representatives, or other person entitled to any share in the partnership property, as to any matter relating to the partnership, the matter in difference shall be referred to two arbitrators, one to be appointed by each party, pursuant and so as with regard to the mode and consequences of the reference, and in all other respects to conform to the provisions in that behalf of the Arbitration Act, 1889, or any then subsisting statutory modification thereof.

Power to vary terms.

XXV. Any of the above terms may be varied by mutual consent, such consent to be either expressed in writing or implied from conduct (*k*). AS WITNESS, &c.

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(*h*) The right to enforce the claim for indemnity does not arise until demand for payment has been made: see *Bradford* v. *Gammon*, [1925] Ch. 132.

(*i*) As to the operation of this clause, see *Vawdrey* v. *Simpson*, [1896] 1 Ch. 166. See also *Bonnin* v. *Neame*, [1910] 1 Ch. 732, where a mortgagee of a partner's share was held not to be bound by this clause.

(*k*) Compare sect. 19 of the Partnership Act, 1890.

## II.

PRECEDENT II.

ALTERNATIVE CLAUSES.

### ALTERNATIVE CLAUSES *in* PARTNERSHIP ARTICLES.

Commencement and duration of partnership.

1. THE partnership shall commence on the —— day of ——, 19—, and shall continue for the period of fourteen years, if the said A., B., and C. or any two of them shall so long live.

Offices vested in one partner to be held in trust for firm.

2. THE said A., in whom the said offices are now vested for the unexpired residue of a term of —— years, granted by a lease dated the —— day of ——, 19—, shall during the partnership hold the said offices and the fixtures and office furniture therein, in trust for and as part of the assets of the partnership, and be indemnified by the partnership against the rent reserved by, and the covenants and agreements contained in, the said lease (*l*).

Capital.

3. THE capital of the partnership shall consist of the sum of £—— advanced by the said A., and of the sum of £—— advanced by the said B., and the said A. and B. shall be entitled to the said capital in the following shares, that is to say, the said A. to two third shares, and the said B. to one third share; and the said A. and B. shall be entitled to interest payable half-yearly at the rate of 5 per cent. per annum from the commencement of the partnership upon the respective sums advanced by them, and if any partner shall advance any further sum as capital, he shall be entitled to interest payable half-yearly at the rate aforesaid from the date of the advance, and the principal of such further advances shall be repaid within twelve calendar months after a notice in writing requiring repayment shall have been given to the other partners or partner, or left at the office for the time being of the partnership.

Partners to be entitled to draw out monthly sums in advance.

4. THE said A. may draw out of the profits of the partnership the annual sum of £——, the said B. the annual sum of £——, and the said C. the annual sum of £——, by equal monthly payments, on the —— day of every month; but if at the end of any year it shall appear, upon taking the general annual account herein directed, that the share of any partner in the net profits of such year (which for the purposes of this article are to be taken to include interest on capital) shall not have amounted to the sum of £—— [*the total amount of his allowances*], then immediately after such general annual account shall have been taken and signed, he shall refund to the partnership the sum by which the amount which he shall have drawn out exceeds the amount of his share of such net profits for the year.

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(*l*) See *Pocock* v. *Carter*, [1912] 1 Ch. 663, where a tenancy during the partnership was inferred from a general direction for payment of rent out of profits, there being no provision in the articles as to the tenancy.

PRECEDENT II.

ALTERNATIVE CLAUSES.

5. No partner shall assign, charge or incumber his share or interest or any part of his share or interest in the partnership without the previous consent in writing of the other partners or partner, except that the said A. may introduce a son and assign the whole or any part of his share to him.

Not to assign shares without consent (*m*).

6. THE said C. shall be considered a sleeping partner, and shall not taken any active part in the business of the partnership.

Sleeping partner not to take any active part.

7. THE partners shall be entitled to the net profits of the business in the shares following, that is to say, the said A. to three sixth shares, the said B. to two sixth shares, and the said C. to one sixth share, and the share of each partner shall be carried to his credit in the books of the partnership, immediately after every such annual account as aforesaid shall have been taken and signed, and may be drawn out at pleasure.

Partners to be entitled to net profits in specified shares.

8. IF the said A. shall be desirous of retiring from the partnership at the end of any year ending on the said —— day of ——, and of such desire shall give not less than —— calendar months' previous notice in writing to the other partners or partner or shall leave such notice at the office for the time being of the partnership, then at the end of such year the partnership, so far as regards the said A., shall determine, and thereupon his share in the net profits, as ascertained at the general annual account appointed to be taken on that day, and all interest upon the capital advanced by him, shall be paid to him within —— calendar months thereafter; and the other partners or partner shall, within the same period, execute and deliver to the said A., or his personal representatives, a bond in a sufficient penalty or covenant for payment to him or them within —— years from the date of such retirement, of the capital for the time being advanced by the said A., together with interest thereon at the rate aforesaid, payable half-yearly.

Provision for the retirement of senior partner at the end of any year.

9. IF any partner shall die during the partnership, his personal representatives shall be entitled to his share in the net profits of the partnership up to the day hereinbefore appointed for taking the next general annual account, and shall be entitled to join with the surviving partners or partner in taking such account, and thereupon the share of the partner so dying, as ascertained by such account, in the net profits, together with all interest upon the capital, if any, for the time being advanced by him, shall be paid to his personal representatives within —— calendar months thereafter, and the surviving partners or partner shall within such period execute and deliver to the personal representatives of the partner so dying a bond in a sufficient

Provision on death of any partner.

(*m*) As to the rights of the assignee, see Partnership Act, 1890, sect. 31.

PRECEDENT II.

ALTERNATIVE CLAUSES

penalty, or covenant for payment to them within —— years from the date of such death, of the capital for the time being (if any) advanced by or belonging to the partner so dying, together with interest at the rate of — per cent. per annum, payable half-yearly.

Provision for payment of annuity to senior partner on his retirement, or to his widow on his death.

10. IN addition to the bond or covenant hereinbefore directed to be given to the said A. on his retirement, and to his personal representatives on his death, whichever event shall happen, the other partners or partner shall execute and deliver to him on his retirement, or on his death to any wife who may survive him, another bond in a sufficient penalty or covenant for the payment to the said A., or to any wife who may survive him, as the case may be, during the period of —— years from the retirement or death of the said A., as the case may be, if he or she shall so long live, of a clear annuity of £——, to be paid by four equal quarterly payments, the first to be made at the end of three calendar months from the retirement or death of the said A.

The other partners to become entitled to share in certain proportions.

11. UPON the execution and delivery of the bonds or covenants hereinbefore directed to be given on the retirement or death of the said A., his share in the partnership property and effects and the goodwill thereof shall go and survive to the said B. and C. in the following proportions, four sixths to the said B. and two sixths to the said C.

Senior partner not to practise within specified distance after retirement.

12. AFTER the retirement of the said A., he shall not practise as a ——, or hold any office included in the business of the partnership, within a radius of —— miles from the office for the time being of the partnership.

Partners may give professional advice gratis to certain members of their families.

13. EACH partner may, at his own separate risk, and without fee or reward, give professional advice and assistance to any member of his family in the degree of relationship of father, mother, child, grandchild, brother or sister, or their respective wives or husbands, but in case any emolument shall arise therefrom, the same shall be for the benefit of the partnership.

Senior partner to introduce junior partner, but to have the choice of patients (*n*).

14. THE said A. shall within a reasonable time after the commencement of the partnership introduce the said B. to all the patients consulting the firm; but, except where any particular patient or family shall expressly require the attendance of the said B., the said A. shall have the choice of attending such of the patients consulting the firm as he shall think proper, and where either partner shall attend any patient or family, the other partner shall not in any manner interfere with him in such attendance, or, except in his absence, attend such patient

(*n*) This clause is considered to be of importance in articles between medical men; and the next following clause is for insertion in similar articles.

or family, but nevertheless all professional business by either partner shall be carried on for the benefit of the partnership.

15. EACH partner shall, during the partnership, provide for himself all such horses and carriages or motor cars as shall be necessary to enable him effectually to attend to the business of the partnership, and shall maintain and keep the same at his sole expense.

Each partner to provide himself with horses, &c.

16. IF either partner shall at any time during the partnership go and remain out of England for three consecutive calendar months without the consent of the other partner, or shall do any act whereby he may be deprived of the privilege of practising as a —— in England, the other partner may, by notice in writing delivered or sent by post to the partner so offending, or left for him at his usual place of abode in England, or at the place of business of the partnership, determine the partnership, and immediately upon such notice being delivered, sent or left, the partnership shall determine.

If either partner shall go abroad for three months, &c., the other may determine the partnership.

17. IF the partnership shall be determined under the last preceding article, the partner determining the partnership shall have the option of taking and paying for the share of the offending partner, in the same manner as is herein provided in the case of the death of either partner, if such option be signified in the notice determining the partnership, and if such option shall not be so signified, the partnership affairs shall be wound up in the same manner as if the partnership had expired by effluxion of time.

Provision for the purchase of offending partner's share.

18. IF the partnership shall be determined under the provision mentioned in the last article, the offending partner shall not, during the remainder of the said term of —— years, practise as a —— within —— miles of —— aforesaid, or attend any person by whom the partnership or the other partner shall have been or shall thereafter be employed, and if and whenever there shall be a breach of this present article, the partner committing such breach shall immediately upon every such breach pay to the other partner the sum of —— as and by way of liquidated damages.

Offending partner not to practise within certain limits.

19. IF either partner [shall assign his share in the partnership or any part thereof, whether absolutely or by way of mortgage or charge or otherwise, or] shall commit or be guilty of a breach of any of the stipulations herein contained [and numbered respectively ——], and the other partner shall within three calendar months after receiving information of such [assignment or] breach, give to the partner by whom such [assignment or]

Provision for dissolution on assignment or breach of articles by either partner (*o*).

(*o*) As to the power of expulsion and the duty of the expelling partner to exercise it fairly, see *Green* v. *Howell*, [1910] 1 Ch. 495.

PRECEDENT II.

ALTERNATIVE CLAUSES.

breach shall have been made or committed, notice in writing that the partnership shall forthwith determine, or leave such notice at the place where the business of the partnership shall for the time being be carried on, then immediately upon such notice being so given or left the partnership shall determine (but without prejudice to any remedies for the breach of any of the stipulations herein contained), and the partnership affairs shall be wound up in the same manner as if the partnership had expired by effluxion of time, unless the partner giving or leaving such notice shall by the same notice declare his option to take and pay for the share of the other partner as provided in the case of the death of either partner, and if such option shall be so declared, such share shall be taken and paid for accordingly, and the partner whose share shall be so taken shall by the release and assignment to be given by him to the partner giving or leaving such notice, enter into a covenant with such last-mentioned partner not at any time afterwards either solely or jointly with, or as agent or servant of or traveller for any other person or persons directly or indirectly to carry on or be engaged or concerned or interested in or to solicit or accept orders in the business of a —— or any trade or business connected therewith or to permit or suffer his name to be used or employed in carrying on or in connection with any such business or trade within twenty miles of —— aforesaid (*p*).

(*p*) It may be prudent to have the stamp upon articles of partnership adjudicated. It is understood that *ad valorem* conveyance duty is payable on a premium paid by an incoming partner, but not on money brought in as capital.

## POWERS OF ATTORNEY.

### General Remarks.

Meaning of "attorney."

An attorney is a person who takes the turn or acts in the place of another, and is a word of ancient origin : see *Spelman's Glossary*, p. 49. An attorney is merely a specially appointed agent, and his powers are regulated by the general law relating to Principal and Agent, and the statutory enactments (referred to below) dealing with powers of attorney, and the instrument appointing him attorney.

When a deed is required.

A letter or power of attorney, if it authorises the execution of a Deed, should itself be by Deed (see *Berkeley* v. *Hardy* (1826), 5 B. & C. 355), but otherwise a Deed is not generally necessary, though perhaps usual (but as to married women, see sect. 129 of the L. P. Act, 1925, set out below). Thus a memorandum of association is not a Deed, and the authority to sign it need not be given by Deed : see *Re Whitley Partners, Ltd.* (1886), 32 Ch. D. 337.

Execution under power of attorney.

An attorney should, as a rule, execute an instrument in the name of his principal, stating that it is executed by the attorney as attorney, the principal being named as a party, but such form of execution is no longer necessary, for it is provided by sect. 123 of the L. P. Act, 1925 (which replaces sect. 46 of the C. Act, 1881), as follows :—

L. P. Act, 1925, s. 123.

> **123.**—(1) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature, and under his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.
>
> (2) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act, and operates without prejudice to any statutory direction that an instrument is to be executed in the name of an estate owner.

The meaning of the words "by the authority of the donor of the power," in this section is not clear. But there seems to be no ground for supposing that they limit the application of the section to cases in which the donor of the power has expressly authorised the attorney to act in his own name. In fact, sub-sect. 2, which extends the section to powers created before the commencement of the Act, precludes this construction.

Power of company to appoint attorney.

By the Companies Act, 1908, a "company" (see sect. 285) "may by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute Deeds on its behalf in any place not situate in the United Kingdom; and every Deed signed by such attorney, on behalf of the company, and under his seal, shall bind the company, and have the same effect as if it were under its common seal": sect. 78. This section, it will be observed, gives power to a company to appoint an attorney to execute Deeds abroad, and such execution would usually be verified by a notarial certificate: see *Palmer's Company Precedents*, Part I. (1922), pp. 1099-1104.

Power of corporation generally.

Apart from the above section, there is an inherent power in all corporations to appoint an attorney to act on their behalf, but doubts have sometimes arisen as to the manner in which Deeds should be executed by an attorney on behalf of a corporation sole or aggregate, or by a corporation aggregate as attorney, especially in a conveyance of property.

Execution by corporations as attorney or by their attorney.

The L. P. Act, 1925, sect. 74, now provides for the mode of execution of instruments by corporations, and incidentally of instruments on their behalf by their attorney, or by them when acting as attorney. The section is as follows:—

L. P. Act, 1925, s. 74.

**74.**—(1) In favour of a purchaser a deed shall be deemed to have been duly executed by a corporation aggregate if its seal be affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer or his deputy, and a member of the board of directors, council or other governing body of the corporation, and where a seal purporting to be the seal of a corporation has been affixed to a deed, attested by persons purporting to be persons holding such offices as aforesaid, the deed shall be deemed to have been executed in accordance with the requirements of this section, and to have taken effect accordingly.

(2) The board of directors, council or other governing body of a corporation aggregate may, by resolution or otherwise, appoint an agent either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument not under seal in relation to any matter within the powers of the corporation.

(3) Where a person is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the conveyance by signing the name of the corporation in the presence of at least one witness, and in the case of a deed by affixing his own seal, and such execution shall take effect and be valid in like manner as if the corporation had executed the conveyance.

(4) Where a corporation aggregate is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of any other person (including another corporation), an officer appointed for that pur-

pose by the board of directors, council or other governing body of the corporation by resolution or otherwise, may execute the deed or other instrument in the name of such other person; and where an instrument appears to be executed by an officer so appointed, then in favour of a purchaser the instrument shall be deemed to have been executed by an officer duly authorised.

(5) The foregoing provisions of this section apply to transactions wherever effected, but only to deeds and instruments executed after the commencement of this Act, except that in the case of powers or appointments of an agent or officer they apply whether the power was conferred or the appointment was made before or after the commencement of this Act or by this Act.

(6) Notwithstanding anything contained in this section, any mode of execution or attestation authorised by law or by practice or by the statute, charter, memorandum or articles, deed of settlement or other instrument, constituting the corporation or regulating the affairs thereof, shall (in addition to the modes authorised by this section) be as effectual as if this section had not been passed.

Infants and lunatics.

Infants as a rule cannot give a power of attorney by Deed (see *Zouch* v. *Parsons* (1765), 3 Burr. 1794, at p. 1804), but a married woman, although an infant, has such power (see below).

A lunatic so found cannot, of course, give a valid power of attorney, but in other cases, where unsoundness of mind is in question, the matter is one of evidence whether in fact the donor of the power was at the time of sound mind : see *Daily Telegraph Co.* v. *McLaughlin*, [1904] A. C. 776.

Married women.

As to married women, sect. 129 of the L. P. Act, 1925 (which replaces sect. 40 of the C. Act, 1881), provides as follows :—

L. P. Act, 1925, s. 129.

**129.**—(1) A married woman, whether an infant or not, has power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do, and the provisions of this Act relating to instruments creating powers of attorney apply thereto.

(2) This section applies to deeds executed after the thirty-first day of December, eighteen hundred and eighty-one.

Note that a Deed is necessary, not merely for executing a Deed, but for doing any other act.

Payments under power without notice of death, &c.

Persons dealing with attorneys were protected in the case of payments or dealings without notice of the death, lunacy, or bankruptcy of the donor, or of the revocation of the power, by sect. 47 of the C. Act, 1881, which is now replaced with additions by sect. 124 of the L. P. Act, 1925, which is as follows :—

L. P. Act, 1925, s. 124.

**124.**—(1) Any person making any payment or doing any act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or

act the donor of the power had died or become subject to disability, or bankrupt, or had revoked the power, if the fact of death, disability, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

Statutory declaration as to non-revocation of power.

(2) A statutory declaration by an attorney to the effect that he has not received any notice or information of the revocation of such power of attorney by death or otherwise shall, if made immediately before or within three months after any such payment or act as aforesaid, be taken to be conclusive proof of such non-revocation at the time when such payment or act was made or done.

Where the donee of the power of attorney is a corporation aggregate, the officer appointed to act for the corporation in the execution of the power may make the statutory declaration in like manner as if that officer had been the donee of the power.

Probate or administration to attorney.

(3) Where probate or letters of administration have been granted to any person as attorney for some other person this section applies as if the payments made or acts done under the grant had been made or done in pursuance of a power of attorney.

Remedy against payee.

(4) This section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(5) This section applies to payments and acts made and done before or after the commencement of this Act, and in this section power of attorney includes a power implied by statute.

Sub-sects. (2) and (3) are new. The statutory declaration under sub-sect. (2) is a useful protection in the case of a revocable power, but is, of course, not required where the power is irrevocable. For Forms of declaration, see under DECLARATIONS, above. As to sub-sect. (3) the position of an attorney administrator is a somewhat complex one, as he is not merely an agent of his principal but has the rights and liabilities of an administrator: see *Rainbow* v. *Kittoe*, [1916] 1 Ch. 313, at p. 320. As to a grant of administration with the will annexed to the attorneys of an executor absent from the country, see *Re Barker*, [1891] P. 251. See also, as to the effect under the former law of the death of the party for whom the administrator is attorney, *Webb* v. *Kirby* (1856), 7 D. M. & G. 376. Compare the above section with sect. 29 of the T. Act, 1925 (which replaces sect. 23 of the T. Act, 1893).

Irrevocable powers of attorney.

Under sect. 126 of the L. P. Act, 1925 (replacing sect. 8 of the C. Act, 1882), a power of attorney, *given for valuable consideration and by the instrument creating the power expressed to be irrevocable*, is in favour of a purchaser permanently effectual, and under sect. 127 of the same Act (replacing sect. 9 of the C. Act, 1882) a power of attorney, *whether given for valuable consideration or not, if by the instrument creating the power expressed to be irrevocable for a fixed time therein specified not exceeding one year from the date of the instrument*, is

in favour of a purchaser effectual during that fixed time, notwithstanding acts done by the donor of the power without the concurrence of the donee, and notwithstanding the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor.

An irrevocable power to sell land is not avoided by the fact that subsequently the principal has become an alien enemy: *Tingley* v. *Müller*, [1917] 2 Ch. 144.

The above-mentioned sections of the L. P. Act, 1925, are as follows :—

L. P. Act, 1925, s. 126.

**126.**—(1) If a power of attorney given for valuable consideration is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser,—

(i) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability, or bankruptcy of the donor of the power; and

(ii) Any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability, or bankruptcy of the donor of the power, had not been done or happened; and

(iii) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power without the concurrence of the donee of the power, or of the death, disability, or bankruptcy of the donor of the power.

(2) This section applies to powers of attorney, created by instruments executed after the thirty-first day of December, eighteen hundred and eighty-two.

L. P. Act, 1925, s. 127.

**127.**—(1) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser,—

(i) The power shall not be revoked for and during that fixed time either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability or bankruptcy of the donor of the power; and

(ii) Any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability, or bankruptcy of the donor of the power, had not been done or happened; and

(iii) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time without the concurrence of the donee of the power, or of the death, disability, or bankruptcy of the donor of the power, within that fixed time.

(2) This section applies to powers of attorney created by instruments executed after the thirty-first day of December, eighteen hundred and eighty-two.

Devolution of power of attorney.

In the case of powers of attorney given for value which are created after 1882, and which were frequently inserted in instruments for value, especially in mortgages, legal effect is now expressly given so as to apply, not only to the donee of the power, but also to persons deriving title under him, thus removing a doubt, especially as to the last-mentioned power. Such a power, if given for sufficient consideration, either by way of security or for the benefit of the grantee, has been held to be of its own nature irrevocable : *Frith* v. *Frith*, [1906] A. C. 254.

The provision above referred to is contained in sect. 128 of the L. P. Act, 1925, which is as follows :—

L. P. Act, 1925, s. 128.

**128.**—(1) A power of attorney given for valuable consideration may be given, and shall be deemed to have been always capable of being given, to a purchaser of property or any interest therein, and to the persons deriving title under him thereto, and those persons shall be the duly constituted attorneys for all the purposes of the power, but without prejudice to any right to appoint substitutes given by the power.

(2) This section applies to powers of attorney created by instruments executed after the thirty-first day of December, eighteen hundred and eighty-two.

(3) This section does not authorise the persons deriving title under the donee of the power to execute, on behalf of the registered proprietor, an instrument relating to registered land to which effect is to be given on the register, unless the power is protected by a caution or other entry on the register.

Meaning of "purchaser."

The term "purchaser" is defined by sect. 205, subsect. (1) (xxi) as including a lessee or mortgagee, and in reference to a legal estate a chargee by way of legal mortgage.

Power of trustee to delegate trust to attorney.

In addition to his powers to employ agents generally, or in any place outside the United Kingdom (T. Act, 1925, s. 23), a trustee may now, when intending to remain out of the United Kingdom for more than a month, by power of attorney to any person not being the only other co-trustee (unless such co-trustee is a trust corporation), delegate any trust during his absence. The provisions relating to this power are contained in sect. 25 of the T. Act, 1925, which is as follows :—

T. Act, 1925, s. 25.

**25.**—(1) A trustee intending to remain out of the United Kingdom for a period exceeding one month may, notwithstanding any rule of law or equity to the contrary, by power of attorney, delegate to any person (including a trust corporation) the execution or exercise during his absence from the United Kingdom of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person or persons :

Provided that a person being the only other co-trustee and not being a trust corporation shall not be appointed to be an attorney under this subsection.

(2) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.

(3) The power of attorney shall not come into operation unless and until the donor is out of the United Kingdom, and shall be revoked by his return.

(4) The power of attorney shall be attested by at least one witness, and shall be filed at the Central Office within ten days after the execution thereof with a statutory declaration by the donor that he intends to remain out of the United Kingdom for a period exceeding one month from the date of such declaration, or from a date therein mentioned.

(5) The execution of any such instrument and statutory declaration shall be verified in such manner as is required by statute in the case of powers of attorney filed at the Central Office.

(6) If the power of attorney confers a power to dispose of or deal with land or a charge registered under the Land Registration Act, 1925, an office copy shall be filed at the land registry.

(7) The statutory declaration aforesaid and a statutory declaration by the donee of the power of attorney that the power has come into operation and has not been revoked by the return of the donor shall be conclusive evidence of the facts stated in favour of any person dealing with the donee.

(8) In favour of any person dealing with the donee, any act done or instrument executed by the donee shall, notwithstanding that the power has never come into operation or has become revoked by the act of the donor or by his death or otherwise, be as valid and effectual as if the donor were alive and of full capacity, and had himself done such act or executed such instrument, unless such person had actual notice that the power had never come into operation or of the revocation of the power before such act was done or instrument executed.

(9) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer but not including the power of delegation conferred by this section.

(10) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.

(11) In this section "trustee" includes a tenant for life and a statutory owner.

The power conferred by this section applies so far only as a contrary intention is not expressed in the instrument: see sect. 69, sub-sect. (2). The section is an important extension of the general law (apart from the Execution of Trusts (War

Facilities) Acts, 1914 and 1915), for it is a well-recognised principle that a trustee cannot delegate his trust.

Special power is also given to trustees for sale of delegating their powers of leasing and management to the tenant for life : see L. P. Act, 1925, sects. 29, 30.

Powers of attorney relating to land to be filed.

It is now not merely optional but obligatory to file powers of attorney relating to land (or a certified copy) when executed after 1925. This is enacted by sect. 125 of the L. P. Act, 1925, which is as follows :—

L. P. A., 1925, s. 125.

**125.**—(1) Where an instrument creating a power of attorney confers a power to dispose of or deal with any interest in or charge upon land, the instrument or a certified copy thereof or of such portions thereof as refer to or are necessary to the interpretation of such power shall be filed at the Central Office pursuant to the statutory enactment in that behalf, unless the instrument only relates to one transaction and is to be handed over on the completion of that transaction :

Provided that, if the instrument relates to land or a charge registered under the Land Registration Act, 1925, the instrument or a certified copy thereof or of such portions thereof as aforesaid shall be filed at the Land Registry, and it shall not be necessary to file it at the Central Office unless it also relates to land or a charge not so registered, in which case the instrument or a certified copy thereof or of such portions thereof as aforesaid shall be filed at the Central Office and an office copy shall be filed at the Land Registry.

(2) Notwithstanding any stipulation to the contrary, a purchaser of any interest in or charge upon land (not being land or a charge registered as aforesaid) shall be entitled to have any instrument creating a power of attorney which affects his title or an office copy thereof or of the material portions thereof delivered to him free of expense.

(3) This section only applies to instruments executed after the commencement of this Act, and no right to rescind a contract shall arise by reason of the enforcement of the provisions of this section.

Deposit of original powers of attorney.

The "statutory enactment" referred to in sub-sect. (1) is sect. 48 of the C. Act, 1881, which is, however, repealed by the Judicature Act, 1925, and replaced by sect. 219 of the last-mentioned Act, which section is as follows :—

J. Act, 1925, s. 219.

**219.**—(1) An instrument creating a power of attorney, the execution of which has been verified by affidavit, statutory declaration or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the Central Office.

(2) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and an office copy thereof shall be delivered out to him on request.

(3) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as, and when so stamped and marked shall become, an office copy.

(4) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Central Office.

(5) Rules of Court may be made for the purposes of this section regulating the practice of the Central Office and prescribing, with the concurrence of the Treasury, the fees to be taken therein.

It had been held that sub-sect. (4) of sect. 48 of the C. Act, 1881 (re-enacted as above), did not make the office copy evidence of the truth of the contents or of the identity of the person by whom the original power of attorney was made, where the power had been executed abroad : *O'Kane* v. *Mullan*, [1925] N. I. 1.

As to the execution abroad of powers of attorney to be used in England, see *Brooke's Notary* (1925), pp. 159, &c., and as to the construction of such powers, see *Dicey's Conflict of Laws* (1922), pp. 609, &c.

Stamp duties.

Stamp duties on powers of attorney are regulated by the Stamp Act, 1891, as amended by the Finance Acts, 1907 and 1917 : see First Schedule of the Stamp Act, 1891, under "Letter or Power of Attorney, &c.," and sect. 80, as amended by sect. 9 of the Finance Act, 1907, and sect. 30 of the Finance Act, 1917, which repeals sect. 81 of the Stamp Act, 1891, and sub-head (5) of the head "Letter or Power of Attorney &c."

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## PRECEDENTS.

### I.

PRECEDENT I.

FOR MANAGEMENT OF PROPERTY OF PERSON GOING ABROAD.

**SHORT POWER** *by a Person going Abroad for Management of his Property* (*a*).

**KNOW ALL MEN** by these presents, that I, A., of, &c. [*donor of the power*], hereby appoint B., of, &c. [*attorney*] (herein called "my attorney," which expression, where appropriate, includes his substitute or substitutes), to be my attorney in my name or on my behalf to do all or any of the following acts or things :—

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General power how limited by recital.

(*a*) The present Precedent is intended as a power for the ordinary management of property during a short absence abroad, and should be adapted to the circumstances of the principal. Thus, if he is a trader, special power to carry on the business, &c., may be necessary. In some preceding editions the words, "being about to go abroad," were inserted after the description of the donor, but as these words might (see *Danby* v. *Coutts & Co.* (1885), 29 Ch. D. 500), be held to limit the exercise of the power to the period of the donor's absence from England, and so make it necessary to prove his absence, it is better to omit them, except in special cases : *e.g.*, on a delegation by a trustee under sect. 25 of the T. Act, 1925 (set out at p. 452).

PRECEDENT I.

FOR MANAGEMENT OF PROPERTY OF PERSON GOING ABROAD.

1. To manage and cultivate, or let or agree to let for such period and upon such terms as my attorney shall think fit, and to receive the rents of all land of whatever tenure, to which I am now or shall become entitled for any estate or interest, or any part thereof.

2. To cut timber for sale or repairs, and to erect, pull down, and repair, buildings on any land of mine.

3. To insure any such buildings against loss or damage by fire, or otherwise.

4. To make arrangements with tenants, and to accept surrenders of leases.

5. To appoint and remove agents, servants or others to help in the management of my land at such remuneration as my attorney may think fit (*b*).

6. To take all lawful proceedings by way of distress, action or otherwise, for recovery of rent in arrear or for eviction of tenants.

7. To commence or carry on, or to defend all actions and other proceedings touching my real or personal estate or any part thereof.

8. To demand, sue for, enforce payment of, and receive and give discharges for all money, securities for money, debts, chattels, and other personal estate whatsoever, now belonging or hereafter to belong to me.

9. To settle, and to compromise, and to submit to arbitration all accounts, claims, and disputes between me and any other person.

10. To receive and give effectual receipts and discharges for all money which I should be entitled to receive.

11. Upon receipt of any money under these presents, to deposit the same with any banker or other person on my behalf, and either in my name or otherwise; AND TO withdraw the same, and to invest the same, or any part thereof, in my name or otherwise, in or upon any such investments, or securities, and in such manner as my attorney shall think fit; AND ALSO out of such money to pay any such calls upon shares, premiums upon policies of insurance, expenses of repairs or improvements, and other outgoings in respect of any part of my real or personal estate, as my attorney shall think fit.

12. For all or any of the purposes aforesaid, to sign my name to or endorse or execute on my behalf all dividend warrants,

(*b*) A power to "mortgage, sell or otherwise dispose of my land or any part thereof" may be added, but such a power is very wide and should not be inserted without express instructions. For a fuller power to the same effect, see Dav. Prec. Conv. (1885), vol. i., pp. 392-395.

cheques, contracts, deeds, transfers, assignments, and instruments whatsoever.

PRECEDENT I. — FOR MANAGEMENT OF PROPERTY OF PERSON GOING ABROAD.

13. To appoint and remove any substitute for or agent under him in respect of all or any of the matters aforesaid, upon such terms (including remuneration) as my attorney shall think fit.

14. Generally to act in relation to my real and personal estate as fully and effectually in all respects as I myself could do.

15. I hereby undertake to ratify everything which my attorney or any substitute or agent appointed by him under the power in that behalf hereinbefore contained shall do, or purport to do, in virtue of these presents.

16. I hereby declare, that this power shall for one year from the date hereof be irrevocable (*c*). IN WITNESS, &c.

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## II.

POWER *for executing a* CONVEYANCE *of* FREEHOLDS (*d*).

PRECEDENT II. — TO EXECUTE A CONVEYANCE.

KNOW ALL MEN by these presents, that I, A., of, &c., hereby appoint B., of, &c., my attorney, in my name or on my behalf, to receive from C., of, &c. [*the purchaser*], or his agent or attorney, the sum of £——, being the price agreed to be paid by the said C. to me for the purchase of certain freehold hereditaments, known as —— Farm, situate, &c., and containing —— acres or thereabouts, together with all interest (if any) for the same sum; AND UPON the receipt of the said sum of £——, in my name or otherwise, and as my act and deed, to sign, seal, and deliver a certain deed, already prepared and engrossed, bearing or intended to bear date on or about the —— day of ——, and expressed or intended to be made between [*parties*], and being or intended to be a conveyance of the said

Power to receive purchase-money.

—execute conveyance;

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(*c*) As to the effect of this clause, see L. P. Act, sect. 127, set out under General Remarks, above.

(*d*) This Precedent is given as an example of a power for executing simply a specified deed, and can be adapted with slight modification to the execution of a specified deed of any other kind. Such a power, when restricted to the execution of a deed already prepared, is ministerial only, giving the attorney no discretion; and, therefore, may be properly given even where the deed is one made under a trust or power, the exercise of which could not be delegated, *e.g.*, a conveyance on sale by a trustee, or deed appointing new trustees. See *Re Hetling and Merton*, [1893] 3 Ch., at p. 280. In this Precedent, however, which is supposed to refer to a conveyance by a beneficial owner, a power to receive the purchase-money and a general discretionary power as to effectuating the conveyance are also given to the attorney, which could not generally be given in a similar power for executing a deed on behalf of a person acting in a fiduciary capacity only. A trustee, however, may authorise a solicitor to receive trust money in manner provided by sect. 23 of the T. Act, 1925. As to delegation of trusts by trustets, see General Remarks, above, pp. 452-454.

PRECEDENT II.

TO EXECUTE A CONVEYANCE.

farm and hereditaments to the use of the said C. in fee simple [*or otherwise, as the case may be*] : AND ALSO upon such receipt in my name or on my behalf to give a proper and effectual receipt for the said sum of £——, and for all interest (if any) thereon : and for that purpose, if he shall think fit, to endorse on the said deed, and sign, such receipt : AND ALSO in my name or on my behalf to execute and do all other deeds and things which my said attorney may consider expedient or necessary for conveying and assuring the said hereditaments and all my estate and interest therein, to the use of the said C., in fee simple [*or*, to the uses hereinbefore referred to], I hereby undertaking to ratify all that my said attorney shall do or purport to do by virtue of these presents; AND I hereby declare that this power shall for one year from the date hereof be irrevocable. IN WITNESS, &c.

—sign receipt;

—and act generally in the matter.

## RELEASES.

### General Remarks.

Release by beneficiaries to trustees on termination of trust.

The most frequent kind of release is that given by beneficiaries to their fiduciaries, when the trust has ended and the property is handed over. As a general rule a trustee is not entitled to claim either a release (other than such usual acknowledgment as a receipt) or an indemnity, if he has kept within the terms of the trust, while if he has exceeded them, it is an act of grace on the part of the beneficiary if he refrains from calling him to strict account.

Releases are, however, often given, although they could not be insisted on, and are sometimes difficult to frame. "Precedents do not afford much assistance in framing a release, because the bulk of the instrument consists of the recitals, which explain the state of affairs, and the nature of the claims to be released, and the operative part, which contains the formal release, is very short, and not capable of much variety. The great principle to be borne in mind in framing releases is, that they are of no avail if given by persons not cognisant of their rights. . . . No general words of release, however sweeping, will extend to release any other claims than those specified or indicated in the recitals": Davidson's Prec. Conv. (3rd ed.), vol. v., pt. ii., pp. 146, 147.

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## PRECEDENTS.

### I.

Precedent I.

To trustees of marriage settlement.

Release *to the* Trustees *of a* Marriage Settlement *upon the Division of the Trust Property after the Death of the* Settlor *and his* Wife, *between their* Son *and* Daughter, *the Daughter's Share being transferred to the Trustees of her Marriage Settlement* (*a*).

THIS RELEASE, made, &c., between A. B., of, &c. [*son*], of the first part, C. D., of, &c. [*husband of daughter*], and E. D., his wife [*daughter*], of the second part, E. F., of, &c.,

(*a*) A release of this description is often made by deed poll, the persons to whom it is given not being made parties, and therefore not being estopped by the recitals.

PRECEDENT I.

TO TRUSTEES OF MARRIAGE SETTLEMENT.

and G. H., of, &c. [*trustees of the daughter's settlement*] (herein called "the sub-settlement trustees") (*b*), of the third part, and I. K., of, &c., and L. M., of, &c. [*trustees of the original settlement*] (herein called "the settlement trustees"), of the fourth part. WHEREAS by a Settlement [*the original settlement*] dated the —— day of ——, and made between N. B., of the first part, O. B. (then O. P., spinster), of the second part, and the settlement trustees and X. Y. (therein called "the trustees"), of the third part (being a settlement made in consideration of the marriage shortly afterwards solemnized between the said N. B. and O. B., and herein called "the settlement"), it was agreed that the trustees should, after the solemnization of the said intended marriage, either permit a sum of £10,000 —— stock, which had been then lately transferred by the said O. B. into the names of the trustees, or any part thereof, to remain unaltered, or should, &c. [*Recite trusts for investment; for wife during joint lives; for survivor for life; and for issue of marriage as husband and wife should jointly appoint and in default as survivor should appoint*]. AND WHEREAS there was issue of the said marriage two children, and no more, namely, the said A. B. and E. D. AND WHEREAS the said X. Y. died on the —— day of ——, and the said N. B. died on the —— day of ——. AND WHEREAS on the —— day of —— the settlement trustees, at the request of the said O. B., sold the sum of £2,300, part of the said sum of £10,000 —— stock (leaving the sum of £7,700 like stock standing in their names), and invested the sum of £—— produced by such sale in the purchase of a freehold house and other hereditaments, situate at ——, which, by a Conveyance dated the —— day of —— and made between, &c. [*parties*], were conveyed to the settlement trustees in fee simple. AND WHEREAS the aforesaid investment was not authorised by the trusts of the settlement, but has been approved of and ratified by the said A. B., C. D., and E. D. AND WHEREAS the said O. B., by a Deed Poll under her hand and seal, dated the —— day of ——, and indorsed on the settlement, in pursuance of the hereinbefore recited power in that behalf, appointed that the sum of £5,000 —— stock (part of the said sum of £7,700 like stock) should thenceforth, subject to the life interest of the

Recital of original settlement;

—issue of marriage;

—of death of one trustee:

and of settlor.

—of unauthorised investment of part of trust fund in purchase of real estate;

—of appointment of a sum of stock to the daughter,

(*b*) These trustees are made parties for the purpose of acknowledging the receipt of the funds transferred to them, but are not made to join in the operative part of the release, as a release by parties not beneficially entitled is sometimes objected to on their behalf, and is of little advantage to the persons obtaining the release. A limited power of executing releases is, however, given to trustees and executors by sect. 15 of the T. Act, 1925, and express powers of a similar character are frequently also given; and in practice trustees often do release.

said O. B. in the dividends and income thereof, be absolutely vested in and held in trust for the said E. D. (then E. B., spinster), and that the sum of £2,700 like stock (the residue of the said stock) and the freehold house and hereditaments so purchased as aforesaid, and all other (if any) the real or personal estate then subject to the trusts of the settlement, should thenceforth, subject to the life interest of the said O. B. in the income thereof, be absolutely vested in and held in trust for the said A. B., his heirs, executors, administrators, and assigns respectively. AND WHEREAS by a Settlement [*the sub-settlement*] dated the —— day of ——, and made between the said C. D., of the first part, the said E. D. (then E. B.), of the second part, and the sub-settlement trustees of the third part (being a settlement made in consideration of the marriage shortly afterwards solemnized between the said C. D. and E. D., and herein called "the sub-settlement"), the said sum of £5,000 —— stock, to which the said E. D. was so entitled in reversion as aforesaid, was assigned by her, with the assent of the said C. D., unto the sub-settlement trustees, upon trust as soon as circumstances would permit to call in and obtain a transfer of the same stock, and upon certain further trusts thereby declared for the benefit of the said C. D. and E. D. and their issue and otherwise. AND WHEREAS the said O. B. died on the —— day of ——. AND WHEREAS all succession, estate and other duties payable in respect of the said trust premises have been paid, and all income arising from the said trust premises during the life of the said O. B. was duly paid to her, and all income arising therefrom since her death has been paid or accounted for to, and the trust accounts have been submitted to and approved by, the said A. B., C. D., and E. D. AND WHEREAS the settlement trustees have, with the privity and approbation of the said C. D. and E. D., transferred the sum of £5,000 —— stock (part of the said sum of £7,700 like stock) into the names of the sub-settlement trustees (the receipt whereof the sub-settlement trustees hereby acknowledge), and have transferred the sum of £2,700 like stock (the residue of the same stock) into the name of the said A. B., and have also, by a Conveyance bearing even date with, but executed before, these presents, and made between [*parties*], conveyed the said freehold house and hereditaments to the said A. B. in fee simple, the said A. B. having elected to take the same as real estate (*c*). AND WHEREAS before making such transfers and conveyance as aforesaid, it was agreed that

—and the rest of the trust property to the son.

Recital of daughter's settlement;

—of the mother's death;

—of payment of duties;

—that income of trust property has been duly applied;

—of transfer to trustees of daughter's settlement of stock appointed to her;

—transfer of remaining stock to son;

—and conveyance to him of the real estate;

—of agreement to release.

(*c*) Subject to election, the trustees would hold the property upon an implied trust for sale: see *Re Jenkins and Randall*, [1903] 2 Ch. 362. See also sect. 32 of the L. P. Act, 1925.

PRECEDENT I.

TO TRUSTEES OF MARRIAGE SETTLEMENT.

Release.

the said A. B., C. D., and E. D. should execute such release as is hereinafter contained. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, they the said A. B., C. D., and E. D. (*d*) Do, and each of them Doth, hereby release the settlement trustees, and each of them, and the personal representatives and the estate and effects of each of them and of X. Y., from all accounts, claims, and demands whatsoever, for or in respect of the said stock and hereditaments so transferred and conveyed as aforesaid, and all other the real or personal estate at any time comprised in or subject to the trusts of the settlement, and the dividends and income of the same, or any part thereof respectively, or for or in respect of any sale, purchase, investment, act, or thing made, done, or omitted by the settlement trustees, and X. Y., or any of them, in or about the said trust premises, or any part thereof, or in the execution of the trusts of the settlement, or for or in respect of anything relating to the premises. IN WITNESS, &c.

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## II.

PRECEDENT II.

BY TENANT FOR LIFE AND REVERSIONER.

JOINT DIRECTION *by a* TENANT FOR LIFE *and* REVERSIONER *to* TRUSTEES TO SELL STOCK *subject to the trusts of a Will and* APPLY THE PROCEEDS *in payment of scheduled debts of the reversioner and* RELEASE *accordingly* (*e*).

THIS RELEASE, made, &c., BETWEEN A. B., of, &c. [*widow and tenant for life*], of the first part, C. B., of, &c., [*reversioner*], of the second part, and D. E., of, &c., and F. G., of, &c. [*trustees*] (herein called "the trustees"), of the third part.

Recital of title of tenant for life and reversioner;

WHEREAS under the Will dated the —— day of ——, and proved in the —— Registry on the —— day of ——, of W. B., her late husband, who died on the —— day of ——, the said A. B. is entitled during her life to the income of the residuary estate of the said W. B., or of the money and investments for the time being representing the same, and by virtue of the same Will, and of a Deed Poll dated the —— day of —— and under

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(*d*) The following words may, if so agreed, be introduced here, "as and according to their several and respective interests, and the sub-settlement trustees, in exercise of every or any power enabling them, but not further or otherwise."

(*e*) This form (which has been found useful in practice, and has received the approval of several eminent conveyancers) may, it is thought, be conveniently adopted under other circumstances, in preference to the more common method, according to which a surrender of the life interest is taken by the reversioner from the tenant for life, who is no party to the release.

PRECEDENT II.

BY TENANT FOR LIFE AND REVERSIONER.

the hand and seal of the said A. B. (being an appointment in execution of a power in that behalf contained in the said Will), the said C. B. is entitled in reversion expectant upon the death of the said A. B. to the sum of £1,000 Two-and-a-half per Cent. Consolidated Stock, part of a sum of £5,000 like stock standing in the names of the trustees, who are the present trustees of the said Will, and representing with other funds the aforesaid residuary estate. AND WHEREAS the said C. B. is indebted to the several persons whose names are written in the first column of the Schedule hereto in the respective sums set opposite to such respective names in the second column of the same Schedule. AND WHEREAS the said A. B., at the request of the said C. B., has agreed to relinquish her life interest in the income of the said sum of stock to which the said C. B. is entitled as aforesaid, and to concur with the said C. B. in directing the same to be sold, and the proceeds of such sale to be applied for payment of the said debts and otherwise as hereinafter provided, and in executing such release as is hereinafter contained. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises—

—of reversioner being indebted as shown in the schedule;

—of agreement by tenant for life to relinquish life interest, and to concur in release.

1. The said A. B. and C. B., according to their respective interests, Do and each of them Doth hereby direct that the trustees shall immediately after the execution of these presents by them, the said A. B. and C. B., sell the said sum of £1,000 Two-and-a-half per Cent. Consolidated Stock, to which the said C. B. is entitled as aforesaid, and shall apply the money produced by such sale in payment (1) of the costs of and incidental to the preparation and execution of these presents and of the execution of the trusts and purposes thereof; (2) of the duty (if any) payable in respect of the stock sold; (3) of the said debts specified in the said second column of the said Schedule hereto, and of the interest and costs (if any) which may be payable in respect thereof or in relation thereto; and (4) of the surplus (if any) which, after answering the purposes aforesaid, shall remain of the money produced as aforesaid unto the said C. B. for his own use.

Direction by tenant for life and reversioner;

—to sell stock,

—and apply proceeds;

—in payment of costs, duty, and scheduled debts;

—and to pay surplus to reversioner.

2. The said A. B. and C. B., according to their respective interests, Do hereby declare that when and so soon as the said sum of £1,000 Two-and-a-half per Cent. Consolidated Stock shall have been sold and the money produced by the sale thereof shall have been applied and paid as hereinbefore is directed, the trustees and each of them, and the personal representatives and the estate and effects of each of them, shall stand and be absolutely released from the same Stock and from the money produced by such sale, and the investments in or upon which

Release.

PRECEDENT II.

BY TENANT FOR LIFE AND REVERSIONER.

the same money would or might otherwise, or ought to have been, under the trusts of the said Will, invested, and the income thereof and every part thereof respectively, and from all actions, accounts, claims, and demands for or in respect of the same Stock, money, and investments, or any of them, or the income of the same, or any part thereof respectively, or for or in respect of any sale, payment, application, act, or thing made, done, or omitted in or about the execution of the directions and trusts hereinbefore contained, or for or in respect of anything in anywise relating to the premises (*f*). IN WITNESS, &c.

SCHEDULE.

| *Names of Creditors.* | *Amounts of Debts.* |
|---|---|

## III.

PRECEDENT III.

RELEASE OF SPECIAL POWER OF APPOINTMENT.

RELEASE *by husband and wife of* POWER TO APPOINT *among* ISSUE *under* SETTLEMENT OF PERSONALTY.

KNOW ALL MEN BY THESE PRESENTS that WE, A., of, &c., and B. [*wife of the said A.*], for divers good causes and considerations Do hereby release the property now or from time to time subject to the trusts of our Marriage Settlement dated the —— day of —— and made between [*parties*] from the power of appointment vested by the said Settlement in us or the survivor in favour of our children or remoter issue. AND we declare that we have not exercised the said power of appointment. IN WITNESS, &c. (*g*).

(*f*) A memorandum of the sale and application of the proceeds should be indorsed on this deed, and signed (if possible) by all parties.

(*g*) See L. P. Act, 1925, sect. 155, replacing C. Act, 1881, sect. 52. The doctrine as to fraud upon a power is not applicable to a release (*Re Somes*, [1896] 1 Ch. 250; *Re Evered*, [1910] 2 Ch. 147), but in *Re Jones*, [1915] 1 Ch. 373, it was held by Astbury, J., that it does apply to a revocation of an appointment. A covenant by the donee of a special testamentary power to appoint a specific sum to a particular person, and not to revoke such appointment, is void, as amounting to an attempt to appoint by deed where the power is to appoint by will, but such a power may be validly released by deed (*Re Cooke*, [1922] 1 Ch. 292).

A release of a power should if possible be by indorsement, or a memorandum of the release should be indorsed on the instrument creating the power.

## SEPARATION DEEDS.

### General Remarks.

Separation deeds generally.

A separation deed between husband and wife is merely an amicable arrangement to live apart under certain specified conditions, which naturally vary with the circumstances of each case. The primary object is to avoid unpleasantness and publicity, and, as far as possible, judicial proceedings for separation or a divorce. The following Precedent is intended to contain the principal conditions which are usually made.

It was formerly usual to add trustees as parties, but such addition now appears to be unnecessary. Their addition was considered advisable, as the trustee covenants were thought to be a protection to the husband against his wife's torts, for which he was liable unless they arose out of contract: see *Edwards* v. *Porter*, [1925] A. C. 1, where two of the learned lords considered that the common law rule as to the husband's liability for his wife's torts had been abrogated by the M. W. P. Act, 1882.

A written agreement to live apart is not a voluntary instrument: *Re Weston*, [1900] 2 Ch. 164. As to such an agreement between persons not married, see *Re Abdy*, [1895] 1 Ch. 455; *Law* v. *Harrigin*, [1917] W. N. 193; 116 L. T. 193.

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## PRECEDENT.

### Deed *of* Separation *between* Husband *and* Wife.

Precedent — separation deed.

THIS SEPARATION DEED, made the —— day of ——, 19—, between A. B., of, &c., (herein called "the husband"), of the one part, and C. B., of, &c., his wife (herein called "the wife"), of the other part (*a*): Whereas unhappy differences have arisen between the husband and the wife in consequence whereof they have agreed to live separate from each other, and to enter into the arrangement hereinafter expressed: And whereas the wife, under her Marriage Settlement dated the —— day of ——, is entitled in possession during her life to the income of the trust fund therein comprised, and under the Will of her father W. K., who died on the —— day of ——, she

Recital of agreement for separation;

—of wife being entitled to certain life interests in personalty;

(*a*) In cases involving the right to commence judicial proceedings, the intervention of trustees may safely be dispensed with: see General Remarks, above.

PRECEDENT — SEPARATION DEED.

will, in the event of her surviving her sister, I. K., also be entitled, after the death of the said I. K. and during the remainder of her own life, to the income arising from the investments representing a legacy of £—— thereby bequeathed for the benefit of the said I. K. during her life and afterwards of the wife and her issue and otherwise : AND WHEREAS the husband and the wife have —— children and no more, namely [*give their names (including M. B. and N. B. afterwards mentioned) and ages*] : NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and for the several considerations herein appearing, each of them the husband and the wife, so far as the stipulations hereinafter contained are to be performed or observed by him or her, Doth hereby covenant with the other of them as follows :—

—of there being —— children.

Mutual covenants.

To live separate and neither molest the other.

I. THE husband and the wife shall henceforth during their joint lives live separate from each other, and the wife shall be free from marital control, and neither of them shall in any way molest (*b*) or interfere with the other, or require or by any proceeding whatever attempt to compel the other to return to cohabitation (*c*), or take any proceedings to obtain a divorce or judicial separation on account of anything already done by the other (*d*), [or a decree annulling their marriage (*e*)] : AND if any such proceedings shall be taken by either of them on account of anything done subsequently to the date of these presents, nothing already done by the other of them shall be pleaded or admissible in evidence in such proceedings (*f*).

Wife may retain and dispose of her real and personal estate as a feme sole.

II. THE wife may retain as her separate property, and dispose of accordingly, all real and personal estate to which she is or may

(*b*) See *Fearon* v. *Aylesford* (1884), 14 Q. B. D. 793; *Sweet* v. *Sweet*, [1895] 1 Q. B. 12; and *Hunt* v. *Hunt*, [1897] 2 Q. B. 547.

(*c*) See *Clark* v. *Clark* (1885), 10 P. D. 188; *Re Weston*, [1900] 2 Ch. 164; *McQuiban* v. *McQuiban*, [1913] P. 208.

(*d*) See *Izard* v. *Izard* (1889), 14 P. D. 45; *Bishop* v. *Bishop*, [1897] P. 138; *Judkins* v. *Judkins*, *ib.* In the absence of such a covenant past offences are not necessarily condoned (*Moore* v. *Moore* (1888), 12 P. D. 193), nor are they condoned, in the strict sense of that word, even by the effect of such a covenant, but either party is left at liberty to plead them in answer to proceedings by the other; and it is doubtful whether this liberty can be taken away by contract. See *Gooch* v. *Gooch*, [1893] P. 99; *Dowling* v. *Dowling*, [1898] P. 228; *Bourne* v. *Bourne*, [1913] P. 164; *Thompson* v. *Thompson*, [1916] P. 165 (dissenting from *Lipman* v. *Lipman*, [1916] P. 25). See also *Philips* v. *Philips*, [1917] P. 90; *Looker* v. *Looker*, [1918] P. 132; *Williams* v. *Williams*, [1921] P. 131. In *Brunton* v. *Dixon*, [1892] W. N. 105, the deed contained a proviso avoiding it if the wife took proceedings on account of previous or subsequent offences, and it was held that the proviso was severable and valid as to acts committed before the date of the deed. See also *Courtney* v. *Courtney*, [1923] 2 I. R. 31.

(*e*) See *Aldridge* v. *Aldridge* (1888), 13 P. D. 210.

(*f*) See *Rose* v. *Rose* (1883), 8 P. D. 98; *Norman* v. *Norman*, [1908] P. 6; *Balcombe* v. *Balcombe*, [1908] P. 176.

hereafter become entitled, [or to which the husband is or may hereafter become entitled in her right] and if she shall die in the lifetime of the husband without having disposed by Will or otherwise of the whole of such real and personal estate, then so much thereof as may remain undisposed of shall at her death belong to the persons or person who would by the law for the time being at her death have become entitled thereto had she died seised or possessed thereof intestate and a widow (*g*).

Wife to have custody of certain children;

III. THE wife, performing and observing the stipulations herein on her part contained [and remaining chaste (*h*)] shall have the sole custody and guardianship of the said M. B. and N. B. during their respective minorities (*i*), [but shall not remove either of them out of England without the consent in writing of the husband (*k*), and shall allow each of them to spend one half of his or her summer and winter holidays with the husband or his relatives in such places [in England] as he or they may desire].

—but allow them to spend part of holidays with husband.

Access to children.

IV. EACH of them the husband and the wife shall have the right at all times to communicate by letter with the children left under or committed to the guardianship of the other of them, and the right of access to such children at convenient times to be settled in case of dispute by two arbitrators (*&c., as at p.* 119].

Husband to pay wife an annuity varying in amount (*m*).

V. THE husband shall, during the joint lives of himself and the wife, if the wife shall so long perform and observe the stipulations herein on her part contained [and remain chaste (*l*)], pay to the wife for her separate use without power of anticipation (*n*), such an annual sum as, when added to the annual income actually for the time being receivable by the wife under the said marriage settlement and Will of the said W. K., will

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(*g*) See A. E. Act, 1925, sect. 46.

(*h*) This is, perhaps, not a usual provision where the Court grants permanent maintenance to a divorced wife, but each case depends on its own circumstances: *Wood* v. *Wood*, [1891] P. 272; *Kettlewell* v. *Kettlewell*, [1898] P. 138. See also *Brailey* v. *Brailey*, [1922] P. 15, at p. 18.

(*i*) See the Custody of Infants Act, 1873, sect. 2; *Hart* v. *Hart* (1881), 18 Ch. D. 670; *Condon* v. *Vollum* (1887), W. N. 121; 57 L. T. 154; *Re Crookes* (1887), W. N. 29. See also Guardianship of Infants Act, 1886, sect. 5, and 1925, sect. 3.

(*k*) See *Hunt* v. *Hunt* (1884), 28 Ch. D. 606.

(*l*) See note to Clause III. In *Brailey* v. *Brailey*, [1922] P. 15, at p. 18, the President remarks that a covenant to pay an annuity during chastity is not a usual covenant. The covenant would not be against public policy if this limitation were omitted; and, where there is also a covenant not to molest, the two covenants are independent and not reciprocal: *Fearon* v. *Aylesford* (1884), 14 Q. B. D. 792.

(*m*) A payment, though to be made "weekly," may, if to extend beyond a year, amount to an "annuity": *Smith* v. *Smith*, [1923] P. 191.

(*n*) Compare the rule as to sums ordered to be paid to a divorced wife for maintenance: *Watkins* v. *Watkins*, [1896] P. 222; and see *Macnaghten* v. *Paterson*, [1907] A. C. 483; *Sprange* v. *Lee*, [1908] W. N. 13.

PRECEDENT. SEPARATION DEED.

make up for each year an annuity of £—— clear of all deductions except income tax [*or*, "such an annual sum as, &c., will, after deduction of income tax, amount to £——"] (*o*), the said annual sum to be considered as accruing from day to day, but to be paid in advance by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, commencing on the —— day of —— next; [but no allowance or return of money shall be made in respect of anything once paid under the present clause if the said annual sum shall cease on any other day than one of the said quarterly days (*p*)].

Wife to support herself, pay her debts, and indemnify husband.

VI. THE wife shall, out of the provisions made for her by the said settlement and Will, and by these presents, or otherwise, in all respects support and maintain herself, and pay and discharge all the debts, engagements and liabilities which she may incur or enter into, and shall indemnify the husband and his personal representatives therefrom, and from all actions, proceedings, costs, damages, expenses, claims, demands, and liability on account thereof (*q*).

Husband to pay annual sum for each child living with the mother;

VII. THE husband shall during his life, if the said M. B. and N. B. or either of them shall so long remain under the age of twenty-one years and reside with or under the guardianship of the wife, and if the wife shall so long perform and observe the

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(*o*) See *Re Barry*, [1906] 2 Ch. 358, where under a covenant for payment without mention of income tax it was held that the annuity was payable less tax, but past payments in respect of tax cannot be deducted from future payments of the annuity: *Re Hatch*, [1919] 1 Ch. 351; *Ord* v. *Ord*, [1923] 2 K. B. 432. If it is desired to pay an annuity free of income tax, this cannot be done directly, see Income Tax Act, 1918, All Schedules Rules, r. 23, sub-s. (2), which provides that every "agreement" for payment of interest, rent, or other annual payment in full without allowing deduction of income tax shall be void: see *Re Peck*, [1921] 2 Ch. 237; *Re Gretton*, [1923] 1 Ch. 77. But where a settlor, after settling the income of certain investments on his wife for life, covenanted to pay to the trustees at the end of every year such sums as had been deducted for income tax on the previous year and settled such sums as income to be paid to his wife, the covenant was held to be valid: *Re Gordon*, [1924] 1 Ch. 146. So if the covenant is to pay as in the words in brackets, the above provisions of the Income Tax Act, 1918, will not be contravened: see *Booth* v. *Booth*, [1922] 1 K. B. 66; *Burroughes* v. *Abbott*, [1922] 1 Ch. 86, and earlier cases. The Act is not applicable to an annuity given by will, see *Re Gretton* (above). As to the statute, see *Re Shrewsbury Estates Acts*, [1924] 1 Ch. 315, 338. The Court also may order that an annuity be paid free of income tax, see *Smith* v. *Smith*, [1923] P. 191.

(*p*) This seems unnecessary so far as respects the annuity here provided for, but may be required as regards the children's maintenance provided for by Clause VII. See *Strangways* v. *Read*, [1898] 2 Ch. 419.

(*q*) To extend this covenant to debts previously contracted by the wife was not allowed where the parties had agreed to a separation deed containing the "usual clauses": see *Brailey* v. *Brailey*, [1922] P. 15, where the Court approved the form given in Dav. Prec. Conv., 3rd ed., vol. v., pt. ii, Precedent 106, Clause 7.

said stipulations herein on her part contained, pay to the wife in respect of each such child for the time being under the age of twenty-one years and resident as aforesaid, an annual sum of £——, clear of all deductions except income tax, to be considered as accruing from day to day, but to be paid as hereinbefore mentioned in relation to the sum required to make up the said annuity of £——, and to be applied by the wife for or towards the maintenance, education and benefit of such child in exoneration of the husband, but without liability on the part of the wife to account so long as such child shall be adequately maintained and educated.

—to be applied for maintenance, &c., of child.

VIII. EACH of them the husband and the wife, and his or her personal representatives, shall at all times execute and do every such assurance and thing as the other of them, or the personal representatives of the other of them, shall reasonably require for the purpose of giving full effect to these presents and the stipulations herein contained.

Covenant for further assurance.

IX. IF the husband and the wife shall be reconciled and return to cohabitation (*r*), [or if their marriage shall be dissolved, or they shall be judicially separated by reason of anything done by either party after the date of these presents (*s*),] then, and in such case the covenants, agreements, and stipulations hereinbefore contained shall forthwith become void, except in respect of proceedings for a breach thereof previously committed. IN WITNESS, &c.

If reconciliation, deed to be void.

(*r*) See *Nicol* v. *Nicol* (1886), 31 Ch. D. 524; *Haddon* v. *Haddon* (1887), 18 Q. B. D. 778; and *Re Abdy*, [1895] 1 Ch. 455, where a covenant for payment of an annuity contained in a deed between unmarried persons was held binding notwithstanding resumption of cohabitation. As to what constitutes a return to cohabitation, see *Rowell* v. *Rowell*, [1900] 1 Q. B. 9. In *Re Spark's Trusts*, [1904] 1 Ch. 451, a provision for children of the marriage contained in a separation deed was held to be unaffected by resumption of cohabitation between the husband and wife.

(*s*) The Court has power in the former case to alter the provisions of a separation deed, but not in the latter: see *Gandy* v. *Gandy* (1882), 7 P. D. 77, 168; *Bishop* v. *Bishop*, [1897] P. 138; *Judkins* v. *Judkins*, *ib.*; and *Dowling* v. *Dowling*, [1898] P. 228.

## SETTLEMENTS.

### General Remarks.

Meaning of "settlement."

The term "settlement" is generally understood to mean a trust of property for persons by way of succession. The definition in the S. L. Act, 1925 (sect. 1, sub-sect. (1), and sect. 117, sub-sect. (1) (xxiv)), while extending the meaning to various other kinds of trusts, is clearly confined to settlements of "land" (defined in sect. 117, sub-sect. (1) (ix)). The other Acts define "settlement" by reference only to the definition in the S. L. Act, 1925. The result is that we find no general statutory definition applicable to property other than land, and the term "settlement" still remains one of vague import, and renders difficult a precise classification.

A complete survey of this complicated branch of the law is not possible here, even in a summarised form, so it is merely proposed to examine some of the changes which have been made, first, as to the powers of trustees of maintenance, &c., and of advancement, and as to protective trusts, and next, in the various modes of settling land, with a short reference to some of the provisions of the S. L. Act, 1925, an Act which is well drafted and should be carefully perused. The new law of entail has already been briefly summarised under Disentailing Deeds, General Remarks.

Powers of maintenance and accumulation.

The powers of maintenance and accumulation, which as to land were conferred by sect. 42, sub-sects. (4) and (5) of the C. Act, 1881, and as to any property by sect. 43 of the same Act, are now replaced by sect. 31 of the T. Act, 1925, which is as follows :—

T. Act, 1925, s. 31.

**31.**—(1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property—

(i) during the infancy of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education, or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is—

(a) any other fund applicable to the same purpose; or

(b) any person bound by law to provide for his maintenance or education; and

(ii) if such person on attaining the age of twenty-one years has

not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) of this section to him, until he either attains a vested interest therein or dies, or until failure of his interest:

Provided that, in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(2) During the infancy of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time in authorised investments, and shall hold those accumulations as follows:—

(i) If any such person—

(a) attains the age of twenty-one years, or marries under that age, and his interest in such income during his infancy or until his marriage is a vested interest; or

(b) on attaining the age of twenty-one years or on marriage under that age becomes entitled to the property from which such income arose in fee simple, absolute or determinable, or absolutely, or for an entailed interest;

the trustees shall hold the accumulations in trust for such person absolutely, but without prejudice to any provision with respect thereto contained in any settlement by him made under any statutory powers during his infancy, and so that the receipt of such person after marriage, and though still an infant, shall be a good discharge; and

(ii) In any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes, and so that, if such property is settled land, such accumulations shall be held upon the same trusts as if the same were capital money arising therefrom;

but the trustees may, at any time during the infancy of such person if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

(3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing in loco parentis to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available

is sufficient, and subject to any rules of court to the contrary) be five pounds per centum per annum.

(4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.

(5) This section does not apply where the instrument, if any, under which the interest arises came into operation before the commencement of this Act.

Note that these powers are extended beyond minority until the person entitled attains a vested interest, and so apply where the interest is postponed, say, until 25, as often occurs; also that the provisions as to contingent interests are amplified, and the powers extended to a vested annuity. The section only applies to instruments coming into operation after 1925.

Power of advancement.

In trusts created after 1925 a new power is, by sect. 32 of the T. Act, 1925, now implied enabling trustees to apply capital (but not capital money within the S. L. Act, 1925) for the advancement or benefit of any person entitled to the whole or part of such capital. The section is as follows :—

T. Act, 1925, s. 32.

**32.**—(1) Trustees may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and such payment or application may be made notwithstanding that the interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs :

Provided that—

(a) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share or interest of that person in the trust property; and

(b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of such share; and

(c) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application.

(2) This section applies only where the trust property consists of money or securities or of property held upon trust for sale calling in and conversion, and such money or securities, or the proceeds of such sale calling in and conversion are not by statute or in equity considered as land, or applicable as capital money for the purposes of the Settled Land Act, 1925.

(3) This section does not apply to trusts constituted or created before the commencement of this Act.

A similar power was usually inserted in properly drawn instruments which created trusts or powers of appointment for children, and may now be omitted in cases where the statutory power effects the intention of the settlor or creator of the trust. In cases where the settlor does not desire to incorporate this power, it may sometimes be advisable (having regard to sect. 69, sub-sect. (2) of the same Act) to expressly exclude the statutory power. By sect. 16 of the same Act, power is given to raise the money to be advanced. The implied power of advancement extends the consents of life tenants to persons having interests prior to the interest of the person to be advanced. It is not clear whether this would render necessary the consent of a person of full age who has acquired a vested interest in a share of the whole property, whose interest, as against a person only contingently entitled, might be materially prejudiced. As to the meaning of "securities" in the T. Act, 1925, see sect. 68, sub-sect. (13). As to the proviso (b) in sub-sect. (1) of sect. 32, see *Re Fox*, [1904] 1 Ch. 480.

Protective trusts.

With the view apparently of shortening beneficial trusts, the Legislature has now furnished a form of trust applicable to persons of extravagant habits. Hitherto a similar form has been in general use, which was evolved by conveyancers, having regard to previous judicial decisions, and shortly gives the person a life interest subject to forfeiture on alienation. The statutory form is provided by sect. 33 of the T. Act, 1925, which is as follows :—

T. Act, 1925, s. 33.

**33.**—(1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called "the principal beneficiary") for the period of his life or for any less period, then, during that period (in this section called the "trust period") the said income shall, without prejudice to any prior interest, be held on the following trusts, namely :—

(i) Upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal

beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine;

(ii) If the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons (that is to say)—

(a) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any; or

(b) if there is no wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he were actually dead, be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be;

as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.

(2) This section does not apply to trusts coming into operation before the commencement of this Act, and has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.

(3) Nothing in this section operates to validate any trust which would, if contained in the instrument creating the trust, be liable to be set aside.

Although it appears to be sufficient to direct that the income (or annuity or other periodical income payment) shall be held on "protective trusts," it may be advisable to add "within the meaning of sect. 33 of the Trustee Act, 1925," so as to show that the statutory form is intended to be incorporated.

It should be noted that, by sub-sect (2), the section "has effect" subject to any variation in the instrument. In cases, therefore, where the section is not relied on and full trusts are set out, it may be advisable to add "by way of substitution for the protective trusts implied by sect. 33 of the Trustee Act, 1925."

The meaning of sub-sect. (3) is obscure, and suggests a doubt as to the validity of some at least of the trusts implied by the section, thereby casting the responsibility on those who adopt the statutory form.

Settlements of land *inter vivos*.

Land may now be settled in one of the following ways. A settlement of land *inter vivos* can be effected either (a) by a Conveyance on trust for sale, whereby the legal estate is vested in trustees (see CONVEYANCES, Precedents V. and XXVII.) and the proceeds of sale are settled by a separate instrument (see below, Precedent XIV. and XV.), or (b) by a Vesting Deed,

whereby the legal estate is vested in the person having the powers of a tenant for life, and a Trust Instrument which declares the trusts upon which the settled land is held.

Settlements of land by Will.

Where land is settled by Will, (a) if on trust for sale, the personal representatives, by conveyance or assent, will vest land in the trustees for sale upon the trusts declared by the Will; (b) if settled directly (or through trustees but without any trust for sale), the personal representatives will execute a Vesting Assent in favour of the tenant for life or statutory owner, and the Will will then constitute the Trust Instrument.

Settlements of land by way of trust for sale.

Settlements of land by way of trust for sale now no longer come within the provisions of the S. L. Act, 1925, (sect. 63 of the S. L. Act, 1882, not being replaced), but are regulated by the provisions in the L. P. Act, 1925, relating to dispositions on trust for sale (see L. P. Act, 1925, sects. 23-33), but such "dispositions" are not necessarily "settlements" within the usual meaning of that term.

Duration of trust for sale.

The trust for sale of the land continues to subsist until the land has been conveyed to or under the direction of the persons interested in the proceeds (L. P. Act, 1925, sect. 23), and is, of course, exhausted on a sale to a purchaser, except that if the settlement contains a power to invest the money in the purchase of land, the trust for sale revives as to the land so purchased : L. P. Act, 1925, s. 32.

Same persons to be trustees.

The same persons must be appointed trustees of the conveyance as of the settlement of the proceeds, but this provision does not concern a purchaser : L. P. Act, 1925, sect. 24.

Power to postpone sale.

In every trust for sale a power to postpone sale is implied, whether the trust was created before 1926 or after 1925. The sale may be postponed for an indefinite period. A power to retain or sell land is to be construed as a trust to sell the land : L. P. Act, 1925, s. 25.

Consents to exercise of trust for sale.

The consent of two persons is sufficient for the exercise of the trust for sale, although the consent of more than two is required by the instrument, subject to any question of the disability of the person whose consent is required : sect. 26.

Purchaser not concerned with trusts of proceeds.

A purchaser of a legal estate from trustees for sale is not concerned with the trusts affecting the proceeds or the rents and profits, even though declared by the same instrument (*e.g.*, a Will), by which the trust for sale was created : sect. 27, sub-sect. (1) ).

Proceeds to be paid to not less than two persons or trust corporation.

Notwithstanding anything to the contrary in the disposition or in the settlement, the proceeds must be paid to not fewer than two persons, unless the trustee is a "trust corporation" (defined in sect. 205, sub-sect. (1) (xxviii) ), and except that a sole personal

representative as such may give a valid receipt for such proceeds. This provision does not, however, render it necessary to have more than one trustee where no "capital money" arises on the transaction : sect. 27. As to the meaning of "capital money," see L. P. Act, 1925, sect. 205, sub-sect. (1) (xxvi), and S. L. Act, 1925, sect. 117, sub-sect. (1) (ii).

Meaning of "capital money."

Powers of management, leasing, &c.

Trustees for sale have in relation to land all the powers of a tenant for life and trustees of a settlement under the S. L. Act, 1925, including the powers of management "conferred by that Act during a minority" : L. P. Act, 1925, s. 28, set out in PARTITIONS, General Remarks. The powers of management referred to are conferred by sect. 102 of the S. L. Act, 1925, which is as follows :—

S. L. Act, 1925, s. 102.

**102.**—(1) If and as long as any person who is entitled to a beneficial interest in possession affecting land is an infant, the trustees appointed for this purpose by the settlement, or if there are none so appointed, then the trustees of the settlement, unless the settlement or the order of the court whereby they or their predecessors in office were appointed to be such trustees expressly provides to the contrary, or if there are none, then any persons appointed as trustees for this purpose by the court on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land on behalf of the infant, and in every such case the subsequent provisions of this section shall apply.

(2) The trustees shall manage or superintend the management of the land, with full power—

(a) to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise; and

(b) to erect, pull down, rebuild, and repair houses, and other buildings and erections; and

(c) to continue the working of mines, minerals, and quarries which have usually been worked; and

(d) to drain or otherwise improve the land or any part thereof; and

(e) to insure against loss by fire; and

(f) to make allowances to and arrangements with tenants and others; and

(g) to determine tenancies, and to accept surrenders of leases and tenancies; and

(h) generally to deal with the land in a proper and due course of management;

but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

(3) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other

person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

(4) This section has effect subject to an express appointment by the settlement, or the court, of trustees for the purposes of this section or of any enactment replaced by this section.

(5) Where any person is contingently entitled to land, this section shall, subject to any prior interests or charges affecting that land, apply until his interest vests, or, if his interest vests during his minority, until he attains the age of twenty-one years.

This subsection applies only where a person becomes contingently entitled under an instrument coming into operation after the commencement of this Act.

(6) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, under which the interest of the infant or person contingently entitled as aforesaid arises, and has effect subject to the terms of that instrument and to the provisions therein contained.

It will be observed that these powers apply not only during a minority, but also pending a contingency until the beneficial interest vests (sub-sect. (5)); also that the section has effect "subject to an express appointment" of trustees for the purposes of the section: sub-sect. (4). It will, therefore, be prudent to expressly incorporate this section, and to appoint the trustees to be trustees for the purpose of exercising such powers.

Power to delegate powers of management.

The trustees, until sale, may revocably delegate their powers of management, &c., to any person of full age (not being an annuitant) entitled in possession to the rents and profits of the land during life or any less period: L. P. Act, 1925, sect. 29. This important power will in proper cases be usefully exercised. Under the S. L. Act, 1884, sect. 7, the tenant for life had power to apply to the Court for leave to exercise the statutory powers of a tenant for life of settled land, and now the person interested may apply to the Court where the trustees refuse to exercise their powers: L. P. Act, 1925, sect. 30.

Application to Court by person interested.

Settlement of land by Vesting Deed and Trust Instrument.

The mode of settling land *inter vivos* by a Vesting Deed and Trust Instrument is a novel procedure, and is regulated by sects. 4 and 5 of the S. L. Act, 1925. These sections are important as being the basis of the new scheme whereby, in the case of settlements of land made *inter vivos* after 1925, the trust instrument is not disclosed to a purchaser of the land, but he is only concerned with the legal title. The key to the working of this scheme may be seen in the statutory examples of abstracts of title (set out under ABSTRACTS). It should be noted that the new mode of settling land is not merely optional, for a purchaser of the land is penalised by not obtaining the legal estate until the requisite vesting instrument has been executed: see S. L. Act, 1925, sect. 13.

Settlements subsisting on 1st January, 1926.

In the case of settlements (not being by way of trust for sale) which are subsisting on the 1st January, 1926, the same principle is applied, and there must be a vesting instrument whereby the legal estate is vested in the tenant for life or statutory owner, the settlement itself being regarded as a trust instrument : S. L. Act, 1925, Second Schedule, para. 1.

Procedure as to Vesting Deed.

The procedure as to effecting a settlement of land under the new scheme is set out in sub-sects. (1) , (2) of sect. 4 of the S. L. Act, 1925, which are as follows :—

S. L. Act, 1925, s. 4, sub-ss. (1) and (2).

**4.**—(1) Every settlement of a legal estate in land inter vivos shall, save as in this Act otherwise provided, be effected by two deeds, namely, a vesting deed and a trust instrument and if effected in any other way shall not operate to transfer or create a legal estate.

(2) By the vesting deed the land shall be conveyed to the tenant for life or statutory owner (and if more than one as joint tenants) for the legal estate the subject of the intended settlement:

Provided that, where such legal estate is already vested in the tenant for life or statutory owner, it shall be sufficient, without any other conveyance, if the vesting deed declares that the land is vested in him for that estate.

Contents of vesting deed.

The statements and particulars which are required to be inserted in every vesting deed are prescribed by sect. 5 of the S. L. Act, 1925, which is as follows :—

S. L. Act, 1925, s. 5.

**5.**—(1) Every vesting deed for giving effect to a settlement or for conveying settled land to a tenant for life or statutory owner during the subsistence of the settlement (in this Act referred to as a "principal vesting deed") shall contain the following statements and particulars, namely:—

(a) A description, either specific or general, of the settled land;

(b) A statement that the settled land is vested in the person or persons to whom it is conveyed or in whom it is declared to be vested upon the trusts from time to time affecting the settled land;

(c) The names of the persons who are the trustees of the settlement;

(d) Any additional or larger powers conferred by the trust instrument relating to the settled land which by virtue of this Act operate and are exercisable as if conferred by this Act on a tenant for life;

(e) The name of any person for the time being entitled under the trust instrument to appoint new trustees of the settlement.

(2) The statements or particulars required by this section may be incorporated by reference to an existing vesting instrument, and, where there is a settlement subsisting at the commencement of this Act, by reference to that settlement and to any instrument whereby land has been conveyed to the uses or upon the trusts of that settlement, but not (save as last aforesaid) by reference to a trust instrument nor by reference to a disentailing deed.

(3) A principal vesting deed shall not be invalidated by reason only of any error in any of the statements or particulars by this Act required to be contained therein.

Protection of purchasers, &c.

As to the importance of the contents of the vesting deed in protecting a purchaser in good faith on any disposition of the settled land, see S. L. Act, 1925, sect. 110.

Contents of trust instrument.

As to the contents of the trust instrument, it is enacted by sub-sect. (3) of sect. 4 of the S. L. Act, 1925, as follows :—

S. L. Act, 1925, s. 4, sub-s. (3).

(3) The trust instrument shall—
(a) declare the trusts affecting the settled land;
(b) appoint or constitute trustees of the settlement;
(c) contain the power, if any, to appoint new trustees of the settlement;
(d) set out, either expressly or by reference, any powers intended to be conferred by the settlement in extension of those conferred by this Act;
(e) bear any ad valorem stamp duty which may be payable (whether by virtue of the vesting deed or otherwise) in respect of the settlement.

Meaning of "trust instrument."

The expression "the trust instrument" in this sub-sect. appears to be confined to a trust instrument following a vesting deed made in a settlement *inter vivos* after 1925; but "trust instrument" also includes a settlement subsisting on the 1st January, 1926 (S. L. Act, 1925, 2nd Sched., para. 1, sect. 1, sub-sect. (1)), and a settlement created by the will of an estate owner who dies after 1925 : S. L. Act, 1925, sect. 6 (a).

Procedure on settlements created by Will.

In the case of settlements created by the Will of an estate owner who dies after 1925, the Will is the trust instrument, and his personal representatives are to convey the land to the tenant for life or statutory owner upon the trusts of the settlement : S. L. Act, 1925, sect. 6.

Procedure on death of a tenant for life.

On the death of a tenant for life or statutory owner, in whom the land was vested, his personal representatives are to convey the land to the person next entitled as tenant for life or statutory owner : S. L. Act, 1925, sect. 7.

Vesting Assent instead of conveyance.

A conveyance by the personal representatives under either of the above-mentioned sections may be made by a Vesting Assent in writing, and such assent is to contain the like statements and particulars as are in a Vesting Deed : S. L. Act, 1925, sect. 8. For a form of Vesting Assent, see ASSENTS, Precedent VIII.

Meaning of "tenant for life."

The person of full age who is for the time being beneficially entitled under a "settlement" (see p. 470, above) to possession of "settled land" (S. L. Act, 1925, sect. 2) for his life is, for the purposes of the S. L. Act, 1925, the tenant for life of that land and the tenant for life under that settlement : S. L. Act,

1925, sect. 19, sub-sect. (1). The expression "tenant for life" in the Act includes a person (not being a "statutory owner") who has the powers of a tenant for life under the Act: S. L. Act, 1925, sect. 117, sub-sect. (1) (xxviii).

Meaning of "statutory owner."

The expression "statutory owner" means the trustees of the settlement or other persons who, during a minority, or at any other time when there is no tenant for life, have the powers of a tenant for life under the Act, but does not include the trustees of the settlement where, by virtue of an order of the Court or otherwise, the trustees have power to convey the settled land in the name of the tenant for life: S. L. Act, 1925, s. 117, sub-sect. (1) (xxvi).

Persons with powers of tenant for life.

Persons having the powers of a tenant for life within the meaning of the S. L. Act, 1925, include, not only (a) the tenant for life himself (S. L. Act, 1925, sect. 19), but (b) other limited owners (sect. 20); (c) absolute owners, subject to certain interests, who comply with certain provisions (sect. 21); (d) the trustees of the settlement where there is no tenant for life (sect. 23); (e) the trustees where specially appointed by order of the Court to exercise those powers in cases where the tenant for life's interest has ceased or he refuses to exercise his powers (sect. 24); (f) the trustees where an infant is absolutely entitled or would be a tenant for life if of full age (sects. 26, 27); (g) the committee or receiver of a lunatic or defective (sect. 28); (h) the trustees of land held on charitable, ecclesiastical, or public trusts (sect. 29); and (i) all other cases where the powers are conferred by law; for example, trustees for sale, who have all the powers of a tenant for life and of the trustees of settled land (p. 429). As to legal estates conveyed to infants, see also L. P. Act, 1925, sect. 19. As to married women, see p. 148.

Who are trustees for purposes of S. L. Act.

As to who are the trustees of the settlement for the purposes of the S. L. Act, 1925, see that Act, sects. 30 to 33. As to the procedure on appointment of new trustees out of Court of a trust instrument, see S. L. Act, 1925, sect. 35 (set out under APPOINTMENTS OF TRUSTEES, General Remarks, pp. 36, 37).

Powers of tenant for life.

As to the powers of sale, exchange, leasing, and other powers of a tenant for life, see sects. 38 to 72 and 90 of the S. L. Act, 1925. Additional or larger powers may be conferred by the settlement: sect. 109. As to the sale of settled land, of mansion and park, and of heirlooms, see CONVEYANCES, General Remarks, pp. 147-149.

That the powers of a tenant for life are not assignable or capable of release, and as to the effect of an assignment of his life interest, see CONSENTS, General Remarks, pp. 79-82.

That the powers of a tenant for life may remain exercisable, notwithstanding a disentailing assurance, if the land is limited upon the prior trusts or a re-settlement of the land, if in restoration or confirmation of his former estate or interest, see sect. 22 of the S. L. Act, 1925. Disentail and re-settlement.

The power of a tenant for life to raise money by legal mortgage on the security of the settled land is restricted to the cases enumerated in sect. 71 of the S. L. Act, 1925, except so far as, pursuant to sect. 16 (see p. 482), he may be compelled to give legal effect to a prior equitable charge. Power of tenant for life to raise money by mortgage.

Statutory owners and also trustees for sale on whom the powers of a tenant for life are conferred are, of course, similarly restricted.

Where, therefore, additional or larger powers of mortgaging are required, they must be expressly conferred either by the vesting deed or the Will creating the settlement, or by the disposition on trust for sale. The section is as follows :—

*Raising of Money.*

S. L. Act, 1925, s. 71.

**71.**—(1) Where money is required for any of the following purposes, namely :—

(i) Discharging an incumbrance on the settled land or part thereof ;

(ii) Paying for any improvement authorised by this Act or by the settlement ;

(iii) Equality of exchange ;

(iv) Extinguishing any manorial incidents ;

(v) Compensating the steward on the extinguishment of manorial incidents and discharging the expenses incurred in connexion with the extinguishment ;

(vi) Redeeming a compensation rentcharge in respect of the extinguishment of manorial incidents and affecting the settled land ;

(vii) Commuting any additional rent made payable on the conversion of a perpetually renewable leasehold interest into a long term ;

(vii) Satisfying any claims for compensation on the conversion of a perpetually renewable leasehold interest into a long term by any officer, solicitor, or other agent of the lessor in respect of fees or remuneration which would have been payable by the lessee or under-lessee on any renewal ;

(ix) Payment of the costs of any transaction authorised by this section or either of the two last preceding sections ;

the tenant for life may raise the money so required, on the security of the settled land, or of any part thereof, by a legal mortgage, and the money so raised shall be capital money for that purpose, and may be paid or applied accordingly.

(2) " Incumbrance " in this section does not include any annual sum payable only during a life or lives or during a term of years absolute or determinable.

(3) The restrictions imposed by this Part of this Act on the leasing powers of a tenant for life do not apply in relation to a mortgage term created under this Act.

Tenant for life a trustee for all parties.

That a tenant for life, in exercising any power under the S. L. Act, 1882, was a trustee for all parties was enacted by sect. 53 of that Act. This section is now replaced by sect. 107, sub-sect. (1) of the S. L. Act, 1925, which is as follows :—

S. L. Act, 1925, s. 107, sub-s. (1).

**107.**—(1) A tenant for life or statutory owner shall, in exercising any power under this Act, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties.

Equitable interests and powers enforceable against estate owner.

The fiduciary position of the estate owner (see L. P. Act, 1925, sect. 3) is elaborated in sect. 16 of the S. L. Act, 1925, which indicates his duty to give effect to the equitable interests and powers affecting the settled land. Apart from this section, practical difficulties might have arisen, for example, in raising money on the security of the settled land in the case of equitable interests (*e.g.*, an equitable term to raise portions) which were liable to be overreached by the exercise of the powers of a tenant for life, unless the legal estate could have been passed to the mortgagee. Other cases may also be imagined where this important section may prove of practical value, as, for example, where the settled land is subject to a general power of appointment, which, if exercised, would override the settlement (see p. 380). The section is as follows :—

S. L. Act, 1925, s. 16.

**16.**—(1) All equitable interests and powers in or over settled land (whether created before or after the date of any vesting instrument affecting the legal estate) shall be enforceable against the estate owner in whom the settled land is vested (but in the case of personal representatives without prejudice to their rights and powers for purposes of administration) in manner following (that is to say) :—

(i) The estate owner shall stand possessed of the settled land and the income thereof upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the equitable interests and powers affecting the settled land or the income thereof of which he has notice according to their respective priorities;

(ii) Where any person of full age becomes entitled to require a legal estate in the settled land to be vested in him in priority to the settlement, by reason of a right of reverter, statutory or otherwise, or an equitable right of entry taking effect, or on the ground that his interest ought no longer to be capable of being over-reached under the powers of this Act, the estate owner shall be bound, if so requested in writing, to transfer or create such legal estate as may be required for giving legal effect to the rights of the person so entitled;

(iii) Where—

(a) any principal sum is required to be raised on the security of the settled land, by virtue of any trust, or by reason of the exercise of an equitable power affecting the settled land, or by any person or persons who under the settlement is or are entitled or together entitled to or has or have a general power of appointment over the settled land, whether subject to any equitable charges or powers of charging subsisting under the settlement or not; or

(b) the settled land is subject to any equitable charge for securing money actually raised and affecting the whole estate the subject of the settlement;

the estate owner shall be bound, if so requested in writing, to create such legal estate or charge by way of legal mortgage as may be required for raising the money or giving legal effect to the equitable charge:

Provided that, so long as the settlement remains subsisting, any legal estate or charge by way of legal mortgage so created shall take effect and shall be expressed to take effect subject to any equitable charges or powers of charging subsisting under the settlement which have priority to the interests or powers of the person or persons by or on behalf of whom the money is required to be raised or legal effect is required to be given to the equitable charge, unless the persons entitled to the prior charges or entitled to exercise the powers consent in writing to the same being postponed, but it shall not be necessary for such consent to be expressed in the instrument creating such legal estate or charge by way of legal mortgage.

(2) Where a mortgage or charge is expressed to be made by an estate owner pursuant to this section, then, in favour of the mortgagee or chargee and persons deriving title under him, the same shall take effect in priority to all the trusts of the settlement and all equitable interests and powers subsisting or to arise under the settlement except those to which it is expressly made subject, and shall so take effect, whether the mortgagee or chargee has notice of any such trusts, interests, or powers, or not, and the mortgagee or chargee shall not be concerned to see that a case had arisen to authorise the mortgage or charge, or that no more money than was wanted was raised.

(3) Nothing contained in paragraph (iii) of subsection (1) of this section affects the power conferred by this Act on a tenant for life of raising money by mortgage or of directing capital money to be applied in discharge of incumbrances.

(4) Effect may be given by means of a legal mortgage to an agreement for a mortgage, or a charge or lien, whether or not arising by operation of law, if the agreement charge or lien ought to have priority over the settlement.

(5) Save as hereinbefore expressly provided, no legal estate shall, so long as the settlement is subsisting, be transferred or created by the estate owner for giving effect to any equitable interest or power under the settlement.

(6) If a question arises or a doubt is entertained whether any and what legal estate ought to be transferred or created pursuant to this section, an application may be made to the court for directions as hereinafter provided.

(7) If an estate owner refuses or neglects for one month after demand in writing to transfer or create any such legal estate, or if by reason of his being outside the United Kingdom, or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected, or cannot be effected without undue delay or expense, the court may, on the application of any person interested, make a vesting order transferring or creating the requisite legal estate.

(8) This section does not affect a purchaser of a legal estate taking free from any equitable interest or power.

Deed of discharge on termination of settlement.

When a settlement of land comes to an end a new duty is now cast upon the trustees of the settlement to declare that they are discharged from the trust. This is provided for by sect. 17, which is as follows :—

S. L. Act, 1925, s. 17.

**17.**—(1) Where the estate owner of any settled land holds the land free from all equitable interests and powers under a trust instrument, the persons who in the last or only principal vesting instrument or the last or only endorsement on or annex thereto are declared to be the trustees of the settlement or the survivors of them shall, save as hereinafter mentioned, be bound to execute, at the cost of the trust estate, a deed declaring that they are discharged from the trust so far as regards that land.

Provided that if the trustees have notice of any derivative settlement, trust for sale or equitable charge affecting such land, they shall not execute a deed of discharge until—

(a) in the case of a derivative settlement, or trust for sale, a vesting instrument or a conveyance has been executed or made for giving effect thereto; and

(b) in the case of an equitable charge, they are satisfied that the charge is or will be secured by a legal mortgage, or is protected by registration as a land charge, or by deposit of the documents of title, or that the owner thereof consents to the execution of the deed of discharge.

Where the land is affected by a derivative settlement or trust for sale, the deed of discharge shall contain a statement that the land is settled land by virtue of such vesting instrument as aforesaid and the trust instrument therein referred to, or is held on trust for sale by virtue of such conveyance as aforesaid, as the case may require.

(2) If, in the circumstances mentioned in subsection (1) of this section and when the conditions therein mentioned have been complied with, the trustees of a settlement on being requested to execute a deed of discharge—

(a) by the estate owner; or

(b) by a person interested under, or by the trustees of, a derivative settlement; or

(c) by the trustees of a conveyance on trust for sale;

refuse to do so, or if for any reason the discharge cannot be effected without undue delay or expense, the estate owner, person interested, or trustees may apply to the court for an order discharging the first mentioned trustees as respects the whole or any

part of the settled land, and the court may make such order as it may think fit.

(3) Where a deed or order of discharge contains no statement to the contrary, a purchaser of a legal estate in the land to which the deed or order relates shall be entitled to assume that the land has ceased to be settled land, and is not subject to any trust for sale.

As to the proviso to sub-sect. (1), it is not clear whether, if the trustees have notice of a derivative settlement, trust for sale, or equitable charge, they are bound to see that a vesting instrument or conveyance or legal mortgage (as the case may be) is executed, or have power to enforce its execution; but apparently, if such instrument or conveyance or mortgage is in fact executed, then they become bound to execute the deed of discharge, assuming that the primary condition as to the land being held free from all equitable interests and powers is fulfilled.

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## PRECEDENTS.

### I.

PRECEDENT I. — ON MARRIAGE, OF WIFE'S STOCK.

**SETTLEMENT** *on Marriage, of a sum of* **STOCK** *belonging to the Wife* (*a*).

**THIS SETTLEMENT**, made, &c., **BETWEEN** A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended wife*], of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (herein called "the trustees," which expression

(*a*) The Married Women's Property Act, 1882, has not materially affected the form of marriage settlements which, so far as regards the wife's property, are intended to protect her from any undue influence on the part of her husband, and secure the property for the common benefit of the husband and wife and the issue of the marriage. It may, however, have rendered settlements of the wife's property less usual, especially as to after-acquired property which, in cases where the wife and issue were already sufficiently provided for, was, even before the Act, sometimes settled to the wife's separate use; but as every woman married after 1882 is entitled to hold as her separate property all property which may belong to her at the time of her marriage, or which she may afterwards acquire, it is of course unnecessary to insert in a marriage settlement any special provisions as to property of the wife which it is desired she shall hold for her separate use (see *Re Lumley*, [1896] 2 Ch. 690). Where she is entitled to property subject to a restraint on anticipation she may before marriage release her interest from the restraint (see *Re Chrimes*, [1917] 1 Ch. 56). By the settlement the wife may still be restrained from anticipation as before the Act (see sect. 19), and the restraint may be extended to her reversionary interests. As to the power of the Court to bind her interest notwithstanding the restraint, see L. P. Act, 1925, s. 169. The Legislature can, of course, do so, and as to the effect of the Treaty of Peace Order, 1919, see *Public Trustee* v. *Wolf*, [1923] A. C. 544, where the nature of the restraint is discussed.

PRECEDENT I.

ON MARRIAGE, OF WIFE'S STOCK.

includes the trustees or trustee for the time being of these presents), of the third part, WITNESSETH, that in consideration of a marriage intended shortly to be solemnised between the said A. (herein called "the husband") and the said B. (herein called "the wife"), IT IS HEREBY AGREED AND DECLARED as follows :—

Declaration of trust;

—for wife till marriage.

1. The trustees shall hold the sum of £—— Stock belonging to the wife, and lately transferred by her into the names of the trustees, IN TRUST for the wife, until the intended marriage (*b*).

Trusts as to investment.

2. After the solemnisation of the marriage the trustees shall either permit the said Stock to remain unaltered, or shall, with the consent in writing of the husband and the wife during their joint lives, and of the survivor during his or her life, and after the death of such survivor, at the discretion of the trustees sell the same or any part thereof, and invest the money produced by such sale [in the names or under the legal control of them the trustees (*c*)] in any investment for the time being authorised by law for the investment of trust money (*d*), and may from time to time with such consent or at such discretion as aforesaid, vary such investments for others of any kind hereby authorised.

Trust for wife for life;

—for husband for life if he survives;

3. The trustees shall pay the income of the said Stock, and of the investments for the time being representing the same (herein called "the trust fund") (1) to the wife during her life, but during her said intended coverture without power of anticipation; and (2) after the death of the wife (if the husband shall survive her), to the husband during his life.

—for issue of marriage, as husband and wife shall jointly appoint;

4. After the death of the husband and the wife the trustees shall hold the trust fund, and the income thereof, (1) IN TRUST for all or any such one or more, exclusively of the others or other, of the children or remoter issue (*e*) of the said intended marriage

(*b*) The marriage contemplated means a valid and effectual marriage, so that if annulled after solemnization, the trust "until the intended marriage" will take effect: *Re Wombwell*, [1922] 2 Ch. 298.

(*c*) The words should be omitted where contributory mortgages are allowed.

(*d*) See T. Act, 1925, sects. 1 to 11; and see next Precedent, in which a wider range of investments will be found.

(*e*) As to the advantage of extending the power of appointment to remoter issue as well as children, see Dav. Prec. Conv., vol. iii., 3rd ed., p. 144. A power to appoint to "issue" includes all issue, however remote, but the interests created by such a power as that in the text must vest within twenty-one years from the death of the survivor of the husband and wife, otherwise they would be void as tending to a perpetuity, and the fund would go as in default of appointment (Sugd. Pow., 8th ed., p. 397); but now some gifts, by which vesting was postponed beyond the age of twenty-one years which would formerly have been void, take effect as if the age of twenty-one years had been inserted: see L. P. Act, 1925, sect. 163. By sect. 158 of the L. P. Act, 1925 (replacing the Powers of Appointment Act,

at such ages or times and if more than one in such shares, and with such trusts, powers or provisions (including a power of advancement) for their respective benefit, exerciseable at the discretion of the trustees or of any other persons or person (*f*), and generally in such manner as the husband and the wife shall by Deed (with or without power of revocation) jointly appoint; AND, in default of and subject to any such appointment, as the survivor shall in like manner by Deed, or by Will or Codicil appoint; AND, (2) in default of and subject to any such appointment, IN TRUST for all the children or any the child of the said marriage, who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, and if more than one, in equal shares (*g*); (3) PROVIDED that no child who or whose issue shall take any part of the trust fund under any such appointment shall, in default of appointment to the contrary, be entitled to any share of the unappointed part of the trust fund, without bringing the share appointed to him or her or to his or her issue into hotchpot; (4) [PROVIDED also that (in substitution for the statutory power of advancement) the trustees may, after the death of the husband and the wife, or during their joint lives or the life of the survivor, with their, his, or her consent in writing, raise any part or parts, not exceeding altogether one half of the then expectant, presumptive, or vested or appointed share (*i*) of any child [or remoter issue]

—in default, as survivor shall appoint;

—in default, for children equally.

Hotchpot clause.

Power of advancement (*h*).

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1874), an exclusive appointment may validly be made under any power (see *Re Galsworthy*, [1922] 2 Ch. 558); but it is still usual to frame powers, as in the text, so as to expressly authorise such an appointment. It is thought better, as in the text, to authorise the donees to vest in the trustees discretionary powers in respect of the appointed shares (see Dav. Prec. Conv., vol. iii., 3rd ed., p. 155, cited with approval in *Re Hughes*, [1921] 2 Ch. 208). The authority to overreach prior interests cannot be properly given without qualification, where the power of appointment is vested in either husband or wife alone. Such a power would not authorise a delegation to trustees of the power of appointment itself: *Re Joicey*, [1915] 2 Ch. 115.

(*f*) See *Re Mackenzie, Bain* v. *Mackenzie*, [1916] 1 Ch. 125, and *Re Mackenzie, Thornton* v. *Huddleston*, [1917] 2 Ch. 58.

(*g*) No practical difficulty arises with respect to the application of the income of the share of a married female infant, but it is now expressly enacted that a married infant can give valid receipts for all income (L. P. Act, 1925, sect. 21).

(*h*) As to the power of advancement now conferred by law on trustees, see T. Act, 1925, sect. 32, set out under General Remarks, above. Note that the statutory power is in addition to powers conferred by the instrument, but only applies so far as no intention to the contrary is expressed (T. Act, 1925, sect. 69, sub-sect. 2).

(*i*) It is thought that the power without these words would extend to an appointed share, but there is some doubt upon the point: see *Re Hodgson*, [1913] 1 Ch. 34; *Re Greenslade*, [1915] 1 Ch. 155; *Re Winch*, [1917] 1 Ch. 633. The extension would usually be desired.

PRECEDENT I.

ON MARRIAGE, OF WIFE'S STOCK.

under the trusts hereinbefore declared, and apply the same (*k*) for his or her advancement or benefit].

In default of children entitled under preceding trusts in favour of wife, her appointees, or next-of-kin.

5. If there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, subject to the trusts hereinbefore declared, and after the death of the husband, and such default or failure of children as aforesaid, the trustees shall hold the trust fund, and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained or by law implied, IN TRUST for such persons and purposes and generally in such manner as the wife shall, when discovert by Deed, revocable or irrevocable, or whether covert or discovert by Will or Codicil appoint, AND in default of and subject to any such appointment, (1) IF the wife shall survive the husband, then IN TRUST for the wife absolutely [but so that she shall not during her said intended coverture have power to dispose of or charge such contingent interest by anticipation]; (2) BUT IF the husband shall survive the wife, then IN TRUST for such person or persons as, under the law for the time being, would have become entitled thereto at the death of the wife, had she died possessed thereof intestate without leaving the husband or any issue of the now intended marriage her surviving [*or* without having been married to her now intended husband (*l*)].

Power to appoint new trustees.

6. The power of appointing a new trustee or new trustees of these presents is vested in the husband and wife during their joint lives, and in the survivor during his or her life. IN WITNESS, &c.

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(*k*) Though this clause seems sufficient for ordinary purposes, it may sometimes be desirable to introduce here the following words :—

"For his or her education, outfit, or starting or preferment in life, or otherwise in any manner."

(*l*) The words in brackets were adopted in the previous edition, as the appropriate form for the then existing law, as it had been finally settled, after considerable difference in judicial opinion, that the mere words "without having been married" without the added words "to her now intended husband" would exclude issue of the wife by another marriage, unless the context or the circumstances required a different meaning to be given to them : *Re Brydone's Settlement*, [1903] 2 Ch. 84; *Boyce* v. *Wasbrough*, [1922] A. C. 425.

Now by the new law of intestacy (see WILLS, General Remarks), although the marital right of the husband to the wife's property no longer prevails, yet he takes substantial benefits in his wife's residue unless expressly excluded. The proposed alternative form above may be substituted for the words "without having been married, &c."

## II.

SETTLEMENT *on* MARRIAGE *of* STOCKS *belonging to the* WIFE, *and of* STOCKS *and* SECURITIES *purchased by the* HUSBAND *in the names of the* TRUSTEES. POWER *to* PURCHASE LAND. AGREEMENT *to settle* AFTER-ACQUIRED PROPERTY *of the* WIFE.

PRECEDENT II.

ON MARRIAGE, OF WIFE'S AND HUSBAND'S STOCKS, AND WIFE'S AFTER-ACQUIRED PROPERTY.

THIS SETTLEMENT, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended wife*], of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (herein called "the trustees," which expression includes the trustees or trustee for the time being of these presents), of the third part. WHEREAS a marriage is intended to be solemnised between the said A. (herein called "the husband"), and the said B. (herein called "the wife"). AND WHEREAS, in pursuance of an agreement entered into upon the treaty for the said intended marriage, the wife has, with the approbation of the husband, transferred into the names of the trustees, the stocks specified in the First Schedule hereto to be held in trust for the wife, until the said intended marriage, and after the solemnisation thereof upon the trusts hereinafter declared. AND WHEREAS, in further pursuance of the said agreement, the husband, with the approbation of the wife, has shortly before the execution of these presents, out of his own money, purchased in the names of the trustees, the stocks and securities specified in the Second Schedule hereto, to be held in trust for the husband, until the said intended marriage, and after the solemnisation thereof upon the trusts hereinafter declared. AND WHEREAS it has been agreed that such provision should be made for the settlement of other and after-acquired property of the wife, as is hereinafter contained. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement and in consideration of the said intended marriage, IT IS HEREBY AGREED AND DECLARED as follows :—

Recital of intended marriage;

—of stock, belonging to wife, having been transferred to the trustees;

—of purchase by husband of stocks and securities in names of trustees;

—of agreement to settle after-acquired property.

1. After the solemnisation of the said marriage the trustees shall either permit all or any of the investments specified in the said First and Second Schedules hereto respectively, to remain unaltered, or shall with the consent in writing of the husband

Trusts as to investments and varying investments giving a wide range (*m*).

(*m*) The power of investment in the text is somewhat wide, but a wide power is often preferable to a limited power. The following are alternative forms, the first being very extensive, and the second restricted. See also the power in the last preceding Precedent authorising only statutory investments.

"In any investment then authorised by law for the investment of trust money or in any of the public stocks or funds, or Government securities of Great Britain and Northern Ireland or

Power of investment giving very extensive range.

PRECEDENT II.

ON MARRIAGE, OF WIFE'S AND HUSBAND'S STOCKS, AND WIFE'S AFTER-ACQUIRED PROPERTY.

and the wife during their joint lives, and of the survivor, during his or her life, and after the death of such survivor, at the discretion of the trustees, sell the same or any part or parts thereof and invest the money thereby produced [in the names or under the legal control of the trustees (*n*)], in any investments in India, or any British Colony or Dependency, including any Federal Union, Commonwealth, Dominion, or Mandated Territory or any separate State or Province therein,* or any foreign country or State, or upon freehold, leasehold, or chattel real securities in England or Wales [or Ireland], or upon heritable, real, or leasehold or immovable securities in Scotland or India, or any such British Colony or Dependency as aforesaid, or any foreign country, or in or upon the stocks, funds, debentures, debenture stock, mortgages, or securities or preferred, deferred, or ordinary shares of any corporation, body, or company, whether municipal, county, local, commercial, or of any other description incorporated or carrying on business in Great Britain [or Ireland] or India, or any such British Colony or Dependency as aforesaid, or any foreign country, or upon the security of any interest, for or determinable with a life or lives in real or immovable or personal or movable property wheresoever situate† or arising, together with any policy of assurance on such life or lives [or on personal security only]." [*Power to vary investments.*]

Power of investment giving restricted range.

"In any investment then authorised by law for the investment of trust money or in any of the public stocks or funds, or Government securities of Great Britain and Northern Ireland or India, or in stock of the Bank of England, or upon real securities in England or Wales, or in or upon the debentures or the debenture, guaranteed, or preference stocks or shares of any [railway or water] company in Great Britain [or Ireland] or India, incorporated by special Act of Parliament, or in or upon the stocks, bonds, debentures, or securities of any public, municipal, county, or local body or authority in Great Britain." [*Power to vary investments.*]

If it is desired to prohibit securities to bearer, add :—

Prohibition of securities to bearer.

"but not in any securities to bearer or transferable by mere delivery or delivery and indorsement, though coming within the general description of the investments hereinbefore authorised."‡

(*n*) Omit these words if contributory mortgages are allowed.

(*) See *Re Maryon-Wilson*, [1912] 1 Ch. 55.

(†) See *I. R. Commissioners* v. *Muller*, [1901] A. C. 217; *Velasquez, Ltd.* v. *I. R. Commissioners*, [1914] 3 K. B. 458.

(‡) See T. Act, 1925, sect. 7, as to investment in bearer securities.

ment then authorised by law for the investment of trust money or in any of the public stocks or funds, or Government securities of Great Britain or Northern Ireland or India, or any British Colony or Dependency, including any Federal Union, Commonwealth, Dominion, or Mandated Territory, or any separate State or Province therein, or upon freehold, leasehold, or chattel real securities in England or Wales [or Ireland], such leasehold securities having not less than sixty years unexpired at the time of investment, or in or upon the stocks, shares, debentures, debenture stock, mortgages, or securities of any company or corporation or body, whether commercial, municipal, county, local, or otherwise, carrying on business or constituted for any purpose in Great Britain [or Ireland], or any such British Colony or Dependency as aforesaid, with power from time to time with such consent or at such discretion as aforesaid to vary such investments for others of any kind hereby authorised (*o*).

Trust for wife for life;

2. The trustees shall pay the income of the stocks specified in the First Schedule hereto and of the investments for the time being representing the same (herein called "the wife's fund"), to the wife, during her life, but during her said intended coverture without power of anticipation; AND after the death of the wife, if the husband shall survive her, shall pay the same income to the husband during his life: AND shall pay the income of the stocks and securities specified in the Second Schedule hereto and of the investments for the time being representing the same (herein called "the husband's fund"), to the husband during his life, and after the death of the husband, if the wife shall survive him, shall pay the same income to the wife during her life, but so that during her said intended coverture such reversionary interest shall be without power of anticipation.

—for husband for life;

—for issue of marriage.

3. After the death of the survivor of the husband and the wife, the trustees shall hold the wife's fund and the husband's fund and the income thereof respectively IN TRUST for [*issue of marriage as husband and wife or survivor appoint; in default for children, as in Precedent I.*]. PROVIDED that no child who or whose issue shall take any property under any appointment shall, in default of appointment to the contrary, be entitled to any share of the unappointed part of such property without bringing the share appointed to him or her, or to his or her issue, into hotchpot [*power of advancement, as in Precedent I.*].

Hotchpot clause (*p*).

(*o*) A power to invest implies a power to vary investments: see *Re Pope and Easte*, [1911] 2 Ch. 442.

(*p*) This form of hotchpot clause should be adopted where (as in the present settlement) funds are settled by reference. See *Re Bristol*, [1897] 1 Ch. 946; *Re Cavendish*, [1912] 1 Ch. 802; *Re Wood*, [1913] 2 Ch. 574; *Re Fraser*, [1913] 2 Ch. 224.

PRECEDENT II.

ON MARRIAGE, OF WIFE'S AND HUSBAND'S STOCKS, AND WIFE'S AFTER-ACQUIRED PROPERTY.

4. If there shall be no child of the said marriage, who, being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, subject to the trusts hereinbefore declared, (1) the trustees shall hold the wife's fund and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained or by law implied, from and after the death of the husband and such default or failure of children as aforesaid, which shall last happen, UPON THE TRUSTS following, that is to say [*trust for appointees of wife and for wife surviving or for her next of kin if husband survives, as in Precedent I.*]; (2) the trustees shall hold the husband's fund and the income of the same, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained or by law implied, from and after the death of the wife, and such default or failure of children as aforesaid, which shall last happen, IN TRUST for the husband absolutely.

Dispositions, in default of children entitled under preceding trusts; —partly for wife and partly for husband.

Power to purchase land.

5. (1) The trustees may during the joint lives of the husband and the wife, and the life of the survivor, upon their, his, or her request in writing, invest (*q*) all or any part of the money subject to the trusts hereinbefore declared (and for that purpose may convert into money, or call in any investments for the time being subject to the aforesaid trusts), in the purchase of any freehold hereditaments in England or Wales, for an estate in fee simple, or of any leasehold hereditaments in England or Wales, for any term of years, whereof not less than [*sixty*] shall be unexpired at the time of such purchase [or in rebuilding, enlarging, adding to, repairing and decorating in a substantial and permanent manner, or otherwise improving any messuage so purchased, or the stables, offices, and buildings belonging thereto or connected therewith (*r*)] : (2) All such hereditaments shall be

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Power to apply limited sum in purchase of house.

(*q*) The following form contemplates only the application of a limited sum in the purchase of a house and adjacent lands :—

"Raise out of the said trust premises any sum or sums not exceeding altogether £——, and apply the same in the purchase of a messuage with or without garden and other grounds or land held therewith as a residence for the husband and the wife or the survivor or their children, and in adapting, repairing, or decorating the same, such messuage and hereditaments to be situate in England or Wales, and to be either freehold or leasehold for any term, &c."

(*r*) As to the expediency of providing at least for repairs, see *Re Freeman*, [1898] 1 Ch. 28; *Re Farnham's Settlement*, [1904] 2 Ch. 561; *Evans* v. *Shotton*, [1918] W. N. 201; 119 L. T. 233.

vested in the trustees, as to freehold hereditaments in fee simple, and as to leasehold hereditaments for the leasehold interest subsisting therein, UPON TRUST that the trustees shall, upon the request in writing of the husband and wife during their joint lives, or the survivor during his or her life, and after the death of such survivor, at the discretion of the trustees, sell the same hereditaments, AND shall hold the net money to arise from any such sale upon the same trusts, and with and subject to the same powers and provisions (including the said power of purchasing hereditaments), as the money laid out in the purchase of such hereditaments would then have been subject to if the same had not been so laid out : AND in the meantime, and until all such hereditaments shall be sold (subject to the right of the husband and the wife and the survivor to occupy any messuage so purchased, they or such survivor keeping the same in tenantable repair and insured to the satisfaction of the trustees) shall pay or apply the net rents and profits of the same hereditaments, or of the part thereof for the time being unsold, in the manner in which the income of the trust premises applied in the purchase thereof as aforesaid would have been payable or applicable under the trusts hereinbefore declared, in case such purchase had not been made. (3) Until sale of all the said purchased hereditaments, the trustees shall manage or superintend the management of the said premises with all the powers in that behalf of absolute owners, and also may upon such request or at such discretion as aforesaid, demise or let the same or any part or parts thereof at such rent for such term and subject to such covenants by the tenant and conditions as if they were absolute owners.

Upon trust to sell and hold money on trusts of settlement (*s*).

Powers of management and leasing (*t*).

6. If the wife shall, after the marriage and during the said intended coverture, at one time and from one source become seised or possessed of, or entitled to, or have an absolute power

Agreement to settle after-acquired property of wife (*u*).

(*s*) A power to purchase land in a settlement of personalty or of land held upon trust for sale made after 1911 implies a trust to sell such land : L. P. Act, 1925, sect. 32; but, if any variation of the statutory form is desired, it is preferable to insert the trust in full.

(*t*) See L. P. Act, 1925, sect. 28, set out under PARTITIONS, General Remarks. If these powers are thought to be too wide, say :—

"Until sale of the said purchased hereditaments the trustees may upon such request and at such discretion as aforesaid exercise all the statutory powers of management and leasing conferred on trustees for sale, including all the powers conferred by sect. 102 of the Settled Land Act, 1925. AND the trustees are hereby appointed trustees for the purposes of the last-mentioned section."

(*u*) The stamp duty in respect of this covenant appears to be 10s. only, no definite or certain sum being thereby settled.

PRECEDENT II.

ON MARRIAGE, OF WIFE'S AND HUSBAND'S STOCKS, AND WIFE'S AFTER-ACQUIRED PROPERTY.

of disposition (otherwise than by Will) of (*x*), any real or personal property of the value of £—— or upwards for any estate or interest (except the property hereinbefore settled, and except any interest whether vested or contingent to which the wife is now entitled in reversion, and except jewels, ornaments, plate, furniture, pictures, books, and other personal chattels and articles of household or domestic use or ornament, and any property expressly or impliedly exempted by the donor from this covenant (*y*) which it is hereby agreed shall belong to the wife for her separate use), THEN, and in every such case, the wife and all other necessary parties shall, at the cost of the trust estate, as soon as circumstances will admit, do all such acts and things as shall be necessary or expedient for effectually vesting the same in the trustees UPON TRUST, that they shall, in such manner as they shall think fit (but as to reversionary property, not without special reason until it shall fall into possession), sell or call in and convert into money so much of the said property as shall not consist of money or of investments of a nature hereinbefore authorised : AND SHALL hold the net money produced by such sale, calling in and conversion, and so much of the said property as shall consist of money or of such investments as aforesaid, and the income thereof respectively upon the trusts (including the trust for investment), and with and subject to the powers and provisions hereinbefore declared and contained concerning the money forming part of the wife's fund, and the income thereof respectively : PROVIDED that the trustees shall not, without the consent in writing of the wife, sell any annuity or other estate or interest for or determinable with her life, which

(*x*) A general covenant of this description is not too vague to be enforced : see *Re Reis*, [1904] 2 K. B. 769. Compare *Re Mudge*, [1914] 1 Ch. 115; *Re Dent*, [1923] 1 Ch. 113.

A reversionary interest vested in the wife before, but falling into possession after the marriage is within this covenant : *Re Crook*, [1923] 2 Ch. 339; see also *Re Hughes*, [1924] 2 Ch. 356. If so intended such reversionary interests should be expressly mentioned amongst the property excepted (see later in the clause).

(*y*) Without such words the expressed intention of the donor that the gift shall not be settled will not exclude it from the covenant : see *Scholfield* v. *Spooner*, 26 Ch. D. 94; *Re Wharton* (1910), 102 L. T. 531. See also *Re Thorne*, [1917] 1 Ch. 360, where the covenant contained such words. Savings and investments of savings of the wife's separate estate are not within the covenant : *Re Clutterbuck*, [1905] 1 Ch. 200; *Mackenzie* v. *Allardes*, [1905] A. C. 285. As to life interests and annuities, see *Re Dowding*, [1904] 1 Ch. 441; *Re Butler*, [1916] 1 I. R. 66; and that gifts by the husband would be caught by the covenant, *Re Ellis*, [1909] 1 Ch. 618; *Re Plumptre*, [1910] 1 Ch. 609; *Leigh-White* v. *Ruttledge*, [1914] 1 I. R. 135; *Re Pryce*, [1917] 1 Ch. 234. As to a jointure agreed to be paid and released by the wife for a lump sum, see *Re Biscoe*, [1914] W. N. 302; 111 L. T. 902. Excepted chattels do not include an undivided share in such chattels : see *Vanneck* v. *Benham*, [1917] 1 Ch. 60.

may form part of the said property, and shall until the same shall be so sold, pay and apply as income of the wife's fund any such annuity, and the income of any such other estate or interest as aforesaid : PROVIDED also that, unless requested in writing by some person beneficially interested therein, the trustees shall not incur any liability for not getting in such after-acquired property of the wife.

7. [*Husband and wife or survivor to appoint trustees: see Precedent I.*]

Power for trustees to settle questions, &c.

8. The trustee (1) may, in addition to the powers conferred on them by law, decide whether any money shall be considered income or capital, and also the value of any property whereof it shall be necessary or desirable to ascertain the value, and may settle and determine all matters as to which any doubt, difficulty, or question may arise in the course of the execution of the trusts or powers of these presents or incidentally thereto; and every such determination, whether made upon a question formally raised, or implied in any of the acts or proceedings of the trustees [and although the trustees or any of them may be personally interested in the result of such determination], shall conclusively bind all persons interested under these presents, and generally the trustees may act in relation to the trust premises as effectually as if they were the absolute owners of the same without being responsible for loss occasioned thereby (*z*); (2) may, in addition to all other powers, statutory or otherwise (*a*), lend on the security of, or purchase, or acquire any hereditaments or property with any title which they shall in their absolute discretion think fit to accept, although the same may be less than or inferior to the title which a purchaser in the absence of a special contract is entitled to require (*b*), and may [lend money in conjunction with any other person or persons by way of contributory loan (*c*), and allow the security for the same to be taken in the name or names of such person or persons jointly with the trustees or any of them, or exclusively or otherwise, and may accept any security subject to prior incumbrances (*d*), and may at any time

(*z*) Compare the powers conferred by the T. Act, 1925, sect. 15.

(*a*) As to the powers conferred by the T. Act, 1925, see sect. 10.

(*b*) Compare the indemnity to trustees given by the T. Act, 1925, sect. 30.

(*c*) In the absence of express power, such a loan would be a breach of trust; *Re Dive*, [1909] 1 Ch. 328.

(*d*) As to the objections to a trustee advancing trust money on a second mortgage, see *Norris* v. *Wright* (1851) 14 Beav. 291, 307 and other cases. So far as the legal estate is concerned, there is no difficulty now, because a second mortgagee can acquire a legal term, but the difficulty as to the title-deeds remains, and such an investment should as a rule be avoided, unless expressly authorised. Whether in itself the investment is a breach of trust is open to question.

PRECEDENT II.

ON MARRIAGE, OF WIFE'S AND HUSBAND'S STOCKS, AND WIFE'S AFTER-ACQUIRED PROPERTY.

release any part of the property comprised in any mortgage security held by them on being satisfied that the remaining property comprised therein is a sufficient security for the money owing thereon, and also] (3) may allow securities and documents belonging to the trust to be placed and remain in their joint names or on their joint behalf in the custody of any banker or solicitor or other agent without retaining by means of keys or otherwise the exclusive control over the same (*e*); (4) shall not be bound unless requested in writing so to do by some person interested in the trust premises (and then only if they shall consider the request reasonable and compliance therewith desirable), to realise or call in any investment which, or the security for which, shall have become depreciated (*f*); and no act or omission in any such respect shall be chargeable as a breach of trust.

Power for professional trustee to charge for business (*g*).

9. Any trustee of these presents acting in relation to the trust property in any professional or business capacity shall in respect of acts so done (and without regard to the question whether they strictly belong to such profession or business, or are such as a trustee could do personally) be entitled to charge and be remunerated out of the trust property as a stranger. IN WITNESS, &c.

FIRST SCHEDULE—*Wife's fund.*

SECOND SCHEDULE—*Husband's fund.*

## III.

PRECEDENT III.

ON MARRIAGE, OF WIFE'S PROPERTY, GIVING HUSBAND DETERMINABLE LIFE INTEREST.

SETTLEMENT *on* MARRIAGE *of stocks and securities belonging to the* WIFE, *giving the* HUSBAND *a* LIFE INTEREST DETERMINABLE *on bankruptcy, assignment, &c.* POWER *for the* WIFE *in certain events to make a* SETTLEMENT *on a* FUTURE MARRIAGE.

THIS SETTLEMENT, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of &c. [*intended*

(*e*) See *Field* v. *Field*, [1894] 1 Ch. 425; and *Re De Pothonier*, [1900] 2 Ch. 529, as to negotiable securities, and *Re Sisson*, [1903] 1 Ch. 262, as to title deeds and non-negotiable securities. By the T. Act, 1925, sect. 11, trustees may, pending investment, deposit trust money in a bank.

(*f*) This seems desirable. See T. Act, 1925, sect. 4, and *Re Chapman*, [1896] 2 Ch. 763; *Shaw* v. *Cates*, [1909] 1 Ch. 389; *Re Brookes*, [1914] 1 Ch. 558; *Re D'Epinoix*, [1914] 1 Ch. 890.

(*g*) If one of the trustees is himself a solicitor, he should obtain special instructions before inserting this clause. See *Re Chapple* (1884), 27 Ch. D. 585, 587. It will not preclude the beneficiaries from having the charges investigated: *Re Fish*, [1893] 2 Ch. 413; *Re Chalinder and Herington*, [1907] 1 Ch. 58.

*wife*], of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (herein called "the trustees" which expression includes the trustees or trustee for the time being of these presents)), of the third part. WHEREAS a marriage is intended to be solemnised between the said A. (herein called "the husband") and the said B. (herein called "the wife"). AND WHEREAS, in pursuance of an agreement made on the treaty for the said marriage, the wife, with the approbation of the husband, has transferred to the trustees the several investments belonging to her, specified in the Schedule hereto, to be held in trust for the wife (*h*) until the intended marriage, and after the solemnisation thereof upon the trusts hereinafter declared. NOW THIS DEED WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the intended marriage, IT IS HEREBY AGREED AND DECLARED as follows :—

PRECEDENT III.

ON MARRIAGE, OF WIFE'S PROPERTY, GIVING HUSBAND DETERMINABLE LIFE INTEREST.

Recital of intended marriage;

—of transfer of investments.

1. After the solemnisation of the intended marriage, the trustees shall either permit all or any of the investments specified in the Schedule hereto to remain unaltered, or shall with the respective consents in writing of the husband, until the failure or determination of the trust hereinafter declared in his favour of the income of the said trust premises, and of the wife, during her life, and after such failure or determination, and the death of the wife, at the discretion of the trustees, sell, call in, and convert into money, all or any of the same investments, and shall invest the money produced thereby [*remainder of trusts as to investments, and varying investments, as in Precedent II.*].

Trust to invest.

2. The trustees (1) shall pay the income of the said investments and money and investments for the time being representing the same (herein called "the trust fund") to the husband, until he shall die or do, or attempt to do, or suffer something, or until some event shall happen (other than an advance under any implied or express power (*k*)), whereby the same or some part thereof would, if belonging absolutely to him, become payable to or vested in some other person or persons, or cease to be payable to himself; (2) after the failure or determination of the trust lastly hereinbefore declared, if the wife shall be then living, shall pay the said income to the wife during her life,

Trusts for husband until bankruptcy or alienation (*i*);

—for wife for life;

(*h*) It is proper, when possible, to frame a settlement in this form, and to transfer the fund to the trustees before or on the execution of the settlement. Where money lent on mortgage is settled, the transfer of the mortgage should be by a separate instrument; for, if the transfer be made in the settlement itself, it would, on a reconveyance, become part of the title to the mortgaged estate. For a form of transfer for this purpose, see MORTGAGES, Precedent XXIX.

(*i*) Compare the "protective trusts" in the T. Act, 1925, sect. 33.

(*k*) See the power of advancement in this Precedent, below.

PRECEDENT III.

ON MARRIAGE, OF WIFE'S PROPERTY, GIVING HUSBAND DETERMINABLE LIFE INTEREST.

but during her said intended coverture, without power of anticipation.

—for issue and children of marriage.

3. After the failure or determination of the trust hereinbefore declared in favour of the husband, and the death of the wife, the trustees shall hold the trust fund and the income thereof, IN TRUST [*for issue of marriage, as husband and wife or survivor appoint; in default for children equally, as in Precedent I., adding after power of appointment to survivor,* " except that in the event of the husband surviving the wife, and the determination in his lifetime of the trust hereinbefore declared in his favour, the power lastly hereinbefore contained shall not be exercisable by him after such determination " (*l*). *Hotchpot clause, as in Precedent I.*].

Power of advancement.

PROVIDED that (in substitution for the statutory power of advancement (*m*)) the trustees may after the death of the wife and the determination of the trust hereinbefore declared in favour of the husband or previously thereto with the respective consents in writing of the wife during her life, and of the husband until the determination of the said trust in his favour, raise [*remainder of power of advancement, as in Precedent I.; trusts in default, or on failure of children, as in Precedent I., except that* " after the determination of the trust hereinbefore declared in favour of the husband " *must be substituted for* " after the death of the husband "].

Power for wife in certain events to make a settlement on a future marriage.

4. (1) If the wife shall survive the husband (*n*), she may, after his death, and whether she shall be covert or sole, by Deed, with or without power of revocation and new appointment, or by Will or Codicil, appoint, that the income of [any part or parts not exceeding altogether one equal moiety of] the trust fund shall, after her death, be paid to any person whom she

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(*l*) This qualification of the survivor's power may be omitted, if desired, but in that case it would be proper to insert the following words immediately before the words " shall hold the trust fund " :—

" If the said trust in favour of the husband shall determine in his lifetime shall during the remainder of his life pay and apply the income of the trust fund in the manner in which the same income would for the time being be payable or applicable if he were then dead. AND after the death of the survivor shall hold, &c."

And the power of advancement would be in the ordinary form, as indeed it sometimes is even in a settlement containing the qualification above referred to. Compare Precedent XIV., in which the husband takes a contingent determinable and protected life interest, and Precedent XVI.

(*m*) See note (*h*) to Precedent I.

(*n*) Compare Precedent XVI., where there are two funds, one settled by the husband and the other by the wife, and the power is given to the survivor.

may marry after the death of the husband for the life of such person, or any less period, with or without restriction. (2) AND, subject to such last-mentioned appointment (if any), may likewise appoint that the capital of [any part or parts not exceeding altogether one equal moiety of] the trust fund shall, after her death, be held in trust for all or any of the issue of any such future marriage of the wife, in such manner as the wife shall think proper (*o*). (3) PROVIDED that the portion of the trust fund, to the income of which any such after-taken husband, or to the capital of which the issue of any subsequent marriage or marriages of the wife shall collectively become entitled under every or any such appointment as aforesaid, shall not bear a greater proportion to the residue of the trust fund than the number of the children of any such subsequent marriage or marriages as aforesaid, who being a son or sons, shall or may attain the age of twenty-one years, or being a daughter or daughters, shall or may attain that age or marry, shall bear to the number of the children of the now intended marriage, who being a son or sons, shall or may attain the age of twenty-one years, or being a daughter or daughters, shall or may attain that age or marry. (4) PROVIDED that any such appointment as last aforesaid may be made by the wife, while it shall be uncertain whether or to what extent the same will be capable of taking effect, and if so made, shall take effect according to the event. (5) PROVIDED ALSO that, subject to any such appointment, the trust fund of which any such appointment shall be made, shall remain and be held upon, and subject to such of the trusts and provisions herein contained concerning the same as shall be subsisting or capable of taking effect. [*Powers to settle questions and to appoint new trustees, and other clauses, as in Precedent II.*]. IN WITNESS, &c.

Provision that issue of present marriage shall not take less in proportion than issue of future marriage.

Appointments in anticipation to take effect according to event.

Subject to preceding power the settlement shall remain in force.

SCHEDULE—*Investments representing trust fund.*

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(*o*) The following is an alternative form :—

"Any parts of the trust fund, not exceeding in the several events hereinafter mentioned the several proportions hereinafter respectively specified (that is to say), if there shall not be more than one child of the said intended marriage who being a son shall attain the age of 21 years, or being a daughter shall attain that age or marry, four equal fifth parts; if there shall be two such children and no more, three equal fifth parts; and if there shall be three or more such children, two equal fifth parts, shall after her death, &c."

## IV.

PRECEDENT IV.

APPOINTMENT BY INDORSEMENT ON SETTLEMENT OF PART OF SETTLED FUND.

APPOINTMENT *by indorsement on the Settlement of part of* FUND SETTLED *on the* APPOINTOR'S MARRIAGE. VARIATIONS *where the* LIFE INTEREST *is* SURRENDERED.

TO ALL TO WHOM THESE PRESENTS SHALL COME, the within-named A. B. (herein called "the appointor") sends greeting. WHEREAS shortly after the execution of the within-written Deed (herein called "the settlement") a marriage was solemnised between the appointor and C. D. afterwards C. B. his wife. AND WHEREAS the said C. B. died on the —— day of ——. AND WHEREAS E. B. is a child of the said marriage. NOW THESE PRESENTS WITNESS, that in exercise of the power for this purpose given to the survivor of them the appointor and his wife by the settlement [and of all other powers], the appointor Doth hereby irrevocably appoint, THAT one equal third part of the several investments, now subject to the trusts of the settlement (*p*), shall, on the execution of these presents, subject to the life interest of the appointor in the income thereof, belong to and be absolutely vested in the said E. B., and be held IN TRUST for the said E. B. (*q*). IN WITNESS, &c.

Recital of marriage;

—death of wife;

—that appointee is a child of the marriage.

Appointment—subject to appointor's life interest.

To child absolutely.

(*p*) Or, if a particular sum of stock be appointed, and the life interest of the appointor be surrendered :—

"All that sum of £—— Two-and-a-half per Cent. Consolidated Stock, part of the sum of £—— like Stock subject to the trusts of the settlement and to be treated as being for all purposes of the value of £——."

The latter words are added because, according to *Re Kelly*, [1910] 1 Ch. 78, the value of the stock for hotchpot purposes would otherwise have to be ascertained as at the date of the death of the surrenderor, and this, it is assumed, would be contrary to the intention. It might often be preferable in such a case to appoint a sum of cash.

(*q*) The following is a form of surrender of the appointor's life interest, appropriate where a particular sum of stock has been appointed (see the last preceding note), and where the appointee is not under disability :—

Surrender of appointor's life interest.

"AND THESE PRESENTS ALSO WITNESS, that the appointor, as settlor, Doth hereby surrender unto the said E. B. all the life interest of the appointor in the said sum of £—— Two-and-a-half per Cent. Consolidated Stock hereinbefore appointed and the income thereof TO the intent that by means of such surrender and of the appointment hereinbefore contained, the said E. B. may become and be henceforth absolutely entitled in possession to the same sum of Stock."

In such a case as this, the liability to succession duty, if any exists, must be taken into consideration (see *Ex parte Sitwell* (1888), 21 Q. B. D. 466; *Buchan* v. *Ld. Advocate*, [1909] A. C. 166), and it may be proper to have

## V.

PRECEDENT V.

APPOINTMENT ON MARRIAGE OF PART OF FUNDS SETTLED BY WILL.

APPOINTMENT *in contemplation of* MARRIAGE *of part of fund, subject to the trusts of a* WILL, *with* PROVISO AVOIDING *the* APPOINTMENT, *if the marriage does not take place within six months.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. (herein called "the appointor"), the wife of C. B., of, &c., sends greeting. WHEREAS, under the Will dated the —— day of ——, of E. D. (father of the appointor, who died on the —— day of ——), and proved with a Codicil thereto, in the —— Registry, on the —— day of ——, divers investments and cash representing residuary estate of the testator (herein called "the trust fund") stand settled upon trusts under which the income thereof is payable to the appointor, during her life, without power of anticipation, and subject thereto, the trust fund is directed to be held in trust for all or such one or more exclusively of the others or other of the children of the appointor, at such ages or times, and generally in such manner in all respects as the appointor shall, notwithstanding coverture, by any Deed or Deeds, with or without power of revocation and new appointment, appoint. AND WHEREAS the trust fund now consists of the particulars set forth in the Schedule hereto and is now standing in the names of or vested in —— and —— as the present trustees of the said Will. AND WHEREAS F. B. is a daughter of the appointor, and a marriage is intended shortly to be solemnised between the said F. B. and G. H., of, &c. NOW THESE PRESENTS WITNESS, that, in exercise of the hereinbefore recited power in the said Will contained [and of all other powers], the appointor Doth hereby appoint, THAT, subject to the life interest of the appointor in the income thereof, one equal moiety of the trust fund shall immediately upon the execution of these presents, belong to and be vested in the said F. B., and be held, IN TRUST (*r*), for the said F. B. PROVIDED

Recital that under the trusts of a will a fund is settled on appointor's children as she shall appoint.

That appointee is a child of the appointor, and about to be married.

Appointment to child (subject to appointor's life interest) of one half of fund.

Proviso avoiding

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the duty commuted and paid at once. The power of the Commissioners to commute is, however, discretionary (Succession Duty Act, 1853, sect. 41). As to estate duty, see the Finance (1909-10) Act, 1910, sect. 59; and as to succession duty at the rate of 1 per cent. where estate duty has been paid, the Finance Act, 1894, sect. 5, sub-sect. 2, and the Finance (1909-10) Act, 1910, sect. 58, sub-sect. 2.

If a proviso, avoiding the appointment, as in the next Precedent, be added, it should extend to avoidance of the whole deed and everything contained in it.

(*r*) If the proposed appointee be an infant, and it is desired that the appointed fund should be settled, the words "for such person or persons, and for such purposes as the said F. B., notwithstanding infancy, shall by Deed with or without power of revocation and

PRECEDENT V.

APPOINTMENT ON MARRIAGE OF PART OF FUNDS SETTLED BY WILL.

appointment, if marriage not solemnised.

that if the said intended marriage shall not be solemnised before the expiration of six calendar months from the date of these presents, the appointment hereinbefore contained shall, at the expiration of such six months, become void. IN WITNESS, &c.

SCHEDULE—*Particulars of trust fund.*

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## VI.

PRECEDENT VI.

APPOINTMENT UNDER A SPECIAL POWER OF THE ENTIRE FUND.

### APPOINTMENT *under a* POWER *in an ordinary* PERSONALTY SETTLEMENT *of the* ENTIRE FUND. VERY SHORT FORM.

Appointment by husband and wife;

—that after death of survivor trustees shall raise and pay certain sums to sons and a daughter;

KNOW ALL MEN BY THESE PRESENTS that we, A. B., of, &c. [*husband*], and C. B., his wife, in exercise of the power given to us for this purpose by the settlement made on our marriage, and of every other power, Do hereby appoint that, after the death of the survivor of us, the trustees or trustee for the time being of the settlement shall raise out of the trust fund subject to the trusts of the settlement, and pay to our children next hereinafter named, the several sums hereinafter mentioned with interest for the same from the death of the survivor of us at the rate of —— per cent. per annum, and without any deduction in respect of estate or other duty (*s*) (that is to say), to our elder son M. B., the sum of £7,500, to our son N. B., the sum of £5,000, and to our daughter, P. X.,

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new appointment appoint, and in default of and subject to such appointment" may be inserted here. This general power would be a good exercise of the power in the text (*Sugden on Powers*, 8th ed., p. 683; *Bray* v. *Bree* (1834), 2 Cl. & Fin. 453); but whether, and to what extent, such general power could be validly exercised during infancy is a question still open to doubt: see *Farwell on Powers* (1916), p. 140, &c. By the Infant Settlements Act, 1855, a male of twenty and a female of seventeen can with the sanction of the Court make a binding marriage settlement of any property over which such infant has a power of appointment (but, as to land, see now S. L. Act, 1925, sect. 27). The Act includes post-nuptial settlements in the case of a male infant: *Re A. B.*, [1914] W. N. 140, but as to a female infant the disability of coverture is not removed, see *Seaton* v. *Seaton* (1888), 13 A. C. 61. Apart from this Act, a settlement made by an infant should be confirmed as soon as the infant comes of age, although, unless repudiated within a reasonable time after majority, it may be made binding. See *Greenhill* v. *North British Co.*, [1893] 3 Ch. 474; *Edwards* v. *Carter*, [1893] A. C. 360; *Re Hodson*, [1894] 2 Ch. 421; *Viditz* v. *O'Hagan*, [1900] 2 Ch. 87; *Carnell* v. *Harrison*, [1916] 1 Ch. 329.

(*s*) It would suffice, perhaps, to describe the sums as net or clear sums (*Re Saunders*, [1898] 1 Ch. 17; *Re Coxwell*, [1910] 1 Ch. 63; *Re Egmont*, [1912] 1 Ch. 251), but the words in the text are preferable. In the absence of some such words the estate duty would be payable rateably by the specific and residuary appointees. See *Re Charlesworth*, [1912] 1 Ch. 319.

the sum of £4,000 (*t*), AND shall hold the residue of the said trust fund and the income thereof, IN TRUST for our daughter, L. B. and our other daughters or daughter except the said P. X. who shall attain the age of twenty-one years or marry, and if more than one in equal shares (*u*) : AND FURTHER that the power of advancement and other powers and provisions contained in the settlement or implied by law shall extend and apply to the sums and shares hereby appointed as nearly as may be : PROVIDED ALWAYS, and we reserve to ourselves power by Deed and to the survivor of us power by Deed or Will to revoke wholly or partially the appointment hereby made. IN WITNESS, &c. (*z*).

PRECEDENT VI.

APPOINTMENT UNDER A SPECIAL POWER OF THE ENTIRE FUND.

—and hold residue for other daughters as a class.

Power of advancement, &c., to apply (*x*).

Power of revocation (*y*).

## VII.

DEED OF REVOCATION *of an* APPOINTMENT *in favour of children, made* UNDER *a* POWER *contained in a* SETTLEMENT *of* PERSONALTY *and* NEW APPOINTMENT *with* POWER *of* REVOCATION.

PRECEDENT VII.

DEED OF REVOCATION AND NEW APPOINTMENT UNDER A SPECIAL POWER.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of ——, widow (herein called "the appointor"), sends greeting. WHEREAS by a Settlement dated the —— day of ——, and made between [*parties*] (being a settlement made in consideration of the marriage shortly afterwards solemnised between the said E. B., since deceased, and the appointor, and herein called "the settlement"), it was declared that the trustees or trustee for the time being thereof should, after the solemnisation of the said then intended marriage, either permit certain reversionary interests and stocks, funds, shares, and securities, belonging to the appointor, and duly vested in the then trustees thereof, to remain unaltered, or should vary the investment of the same as therein mentioned, and should pay the income thereof and of the investments for the time being representing the same to the appointor during the joint lives of herself and

Recital of settlement;

(*t*) These children are assumed to be of age.

(*u*) It is assumed that L. B. has attained 21, and consequently that no ultimate trust is needed. The daughters take as a class, but it would be better not to use this form of trust in a will.

(*x*) It is not clear that this can be done under a power not specially authorising the donees to create such powers. See Dav. Prec. Conv., vol. iii., 3rd ed., p. 159. But see *Re May*, [1926] 1 Ch. 136.

(*y*) See *Re Weightman*, [1915] 2 Ch. 205.

(*z*) Notice of the deed should be given to the trustees.

PRECEDENT VII.

DEED OF REVOCATION AND NEW APPOINTMENT UNDER A SPECIAL POWER.

the said E. B., and after the death of either of them, to the survivor during his or her life, and after the death of such survivor should hold the trust premises and the income thereof IN TRUST for all or any of the issue of the said then intended marriage with such future or other trusts for their respective benefit, and provisions for their respective advancement (either overreaching the interests prior to the power now in recital or not) and other powers exercisable at the discretion of the said trustees or trustee, or of any other persons or person, and generally in such manner as the said E. B. and the appointor should jointly by Deed appoint, and in default of and subject to such appointment as the survivor should by Deed, or Will, or Codicil, appoint, AND in default of and subject to such appointment upon trusts thereby declared for the benefit of the children or child of the said marriage with the usual hotchpot clause [and power of advancement]. AND in the settlement were contained (among other powers and provisions) a provision for the settlement upon and subject to corresponding trusts and powers of other and after-acquired property of the appointor, and also a power for the appointment of new trustees thereof. AND WHEREAS the aforesaid reversionary interests have fallen into possession, and certain money has become subject to the aforesaid provision contained in the settlement for the settlement of other and after-acquired property of the appointor. AND WHEREAS the trust fund now subject to the trusts of the settlement consists of the investments specified in the Schedule hereto and standing in the names or under the legal control of —— and ——, the present trustees of the settlement. AND WHEREAS the said E. B. died on the —— day of ——, ——, without having joined with the appointor in exercising the joint power of appointment conferred by the settlement. AND WHEREAS there was issue of the said marriage six children and no more, namely, three sons, D. B., F. B., and G. B., and three daughters, H. B. (afterwards H. M., having married L. M.), J. B., and K. B. AND WHEREAS by an Appointment dated the —— day of ——, 19—, under the hand and seal of the appointor (herein called the Appointment of 19—), in exercise of the aforesaid power given to her by the settlement, she appointed that the trustees or trustee for the time being of the settlement should, after the death of the appointor, raise out of the trust premises and pay to the said D. B., the sum of £2,000 with interest for the same at the rate of — per cent. per annum from the death of the appointor [and without any deduction in respect of estate or other duty], and subject thereto should hold the trust fund and the income thereof upon trusts therein expressed for the

—as to reversionary interests and after-acquired property;

—of present state of trust fund;

—of death of husband;

—of issue;

—of previous appointment revocable except as regards eldest son;

benefit of her other children. AND by the Appointment of 19— the appointor declared that it should be lawful for her at any time thereafter by Deed or Will to revoke all or any of the appointments thereinbefore contained, other than the appointment to or in favour of the said D. B. of the said sum of £2,000 and interest. AND WHEREAS the said H. M. died on the —— day of ——, 19—, leaving issue, and the said G. B. is of unsound mind, but has not been so found by inquisition, and the said F. B., and J. B., and K. B. are respectively infants. AND WHEREAS the appointor desires to revoke the appointment made by the Appointment of 19— for the benefit of her children other than the said D. B., and of making such new appointment as hereinafter expressed. NOW THESE PRESENTS WITNESS as follows :—

—of state of family;

—of desire to revoke appointment in part.

1. In exercise of the power by the Appointment of 19— for this purpose so reserved to the appointor as aforesaid, and of every other power enabling her, the appointor Doth hereby revoke the appointment made by the Appointment of 19— other than and except so far as regards the appointment to or in favour of the said D. B. of the said sum of £2,000 and interest.

Revocation except of appointment to eldest son.

2. In exercise of the power by the settlement for this purpose given to the appointor as the survivor of herself and the said E. B., and of every other power, the appointor Doth hereby appoint that the trustees or trustee for the time being of the settlement, from and immediately after the death of the appointor, after raising thereout and out of the income thereof respectively, and paying to the said D. B., the said sum of £2,000 and interest appointed by the Appointment of 19— to him or in his favour as aforesaid [and the duties in respect thereof], shall hold so much as shall remain of the investments specified in the Schedule hereto, or any other property which may be substituted therefor and all other property which by virtue of the aforesaid provision contained in the settlement for the settlement of other and after-acquired property of the appointor, or otherwise howsoever, now is or shall become subject to the trusts of the settlement (herein collectively called "the remainder of the trust fund"), and the income thereof, (1) UPON TRUST that the said trustees or trustee, shall, out of the income of the remainder of the trust fund, pay or apply an annuity of £—— [clear of estate duty and all other deductions] for or towards the maintenance and support of the said G. B. during his life, such annuity to commence from the death of the appointor, (2) AND subject to the payment of such annuity shall hold one equal third part of the remainder of the trust fund and the income thereof IN TRUST for all the children or any the

Appointment of remainder of trust fund.

To pay an annuity for benefit of lunatic son;

—and subject thereto as to one-third for children of deceased daughter;

PRECEDENT VII.

DEED OF REVOCATION AND NEW APPOINTMENT UNDER A SPECIAL POWER.

child of the said H. M. (*a*), who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, and if more than one in equal shares, AND in default of any such child UPON THE TRUSTS hereinafter declared concerning the other two equal third parts of the remainder of the trust fund and the income thereof respectively, (3) AND shall hold the other two equal third parts of the remainder of the trust fund and the income thereof, IN TRUST for the said F. B., J. B., and K. B. in equal shares. PROVIDED that if any of them the said F. B., J. B., and K. B., shall die, being male, under the age of twenty-one years, or being female, under that age and without having been married, the share or shares (accruing as well as original) of him, her, or them so dying, shall accrue to the others or other of them, and the said D. B., and if more than one in equal shares.

—and as to remaining two-thirds for other children.

Accruer clause.

Power of advancement, &c., to apply.

3. The power of advancement and other powers and provisions contained in the settlement or implied by law shall extend and apply to the shares hereby appointed as nearly as may be.

Accumulations during minorities to be capital.

4. Accumulations arising during the minority or minority and discoverture of any infant appointee, and not applied under the statutory power in that behalf, shall form an accretion to the capital of the share of such appointee so as to be blended and devolve along with the same (*b*).

Power to appropriate fund to answer annuity.

5. The said trustees or trustee may appropriate, to answer by means of the income thereof the said annuity of £——, such parts of the remainder of the trust fund as they or he shall think sufficient for that purpose, and in the event of such appropriation being made the income of the appropriated parts shall be exclusively applicable for payment of the said annuity in entire exoneration of the income of the parts not so appropriated, and in case the income of the appropriated parts shall become insufficient to satisfy the said annuity, the same shall abate accordingly.

Power of revocation and new appointment.

6. It shall be lawful for the appointor by Deed, or Will, or Codicil, to revoke wholly or partially, or to vary, all or any of the appointments hereinbefore contained, and by the same or any other Deed, or by Will or Codicil, to declare pursuant to the power contained in the settlement any new or other trusts concerning the premises the trusts whereof shall be so revoked. IN WITNESS, &c.

SCHEDULE—*Investments representing trust fund.*

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(*a*) Observe that, H. M. being dead, no question of remoteness arises.
(*b*) See *Re Bowlby*, [1904] 2 Ch. 685; *Re Boulter*, [1918] 2 Ch. 40.

## VIII.

SETTLEMENT, *on* MARRIAGE, *of a* REVERSIONARY INTEREST *in Personalty, and a* POLICY *of* ASSURANCE *on the Husband's Life effected in the names of the* TRUSTEES (*c*). POWER *to* LEND *a portion of the fund to the* HUSBAND.

PRECEDENT VIII.

ON MARRIAGE, OF REVERSIONARY INTEREST OF WIFE, AND POLICY ON HUSBAND'S LIFE.

THIS SETTLEMENT, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, F. B., of, &c. [*intended wife*], of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (herein called "the trustees," which expression includes the trustees or trustee for the time being of these presents), of the third part. WHEREAS a marriage is intended to be solemnised between the said A. (herein called "the husband") and the said F. B. (herein called "the wife"). AND WHEREAS, under a Settlement dated the —— day of ——, and made between [*parties*] (being a settlement made in consideration of a marriage shortly after solemnised between the said G. B. and H. B., the father and mother of the wife (and herein called "the parent settlement"), and by virtue of an Appointment (*d*) made in exercise of a power contained in the parent settlement, under the hands and seals of the said G. B. and H. B., dated the —— day of ——, the wife is entitled in reversion expectant on the death of the survivor of the said G. B. and H. B., and subject to their respective life interests therein, absolutely to a —— share, and contingently to other shares or another share in the fund subject to the trusts of the parent settlement (which fund, including the investments and cash representing the same, is herein called "the parent fund"). AND WHEREAS the parent fund now consists of or is represented by the investments and cash specified in the Schedule hereto, and standing in the names of or otherwise vested in —— and —— as trustees of the parent settlement. AND WHEREAS upon the treaty for the now intended marriage it was agreed that the said absolute and contingent shares of the wife in the parent fund shall be settled upon the trusts hereinafter declared concerning the same. AND WHEREAS, in pursuance of a further agreement made on the treaty for the said intended marriage, the husband has effected an insurance on his life, in the names of the trustees with the —— Assurance Office, by a policy (herein called "the policy") dated the —— day of ——, numbered ——, in the sum of £——, and under the annual

Recital of intended marriage.

Recital of wife's title to a reversionary interest in a share under her father's and mother's settlement;

—that husband has insured his life in trustees' names.

(*c*) The policy here settled is one effected in the names of the trustees. See the next Precedent for the form of settlement of a policy effected, as is most usual, in the husband's name.

(*d*) See the previous Precedent and Precedent VI.

PRECEDENT VIII.

ON MARRIAGE, OF REVERSIONARY INTEREST OF WIFE, AND POLICY ON HUSBAND'S LIFE.

premium of £—— to the intent that the same may be settled upon the trusts hereinafter declared concerning the same. Now THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the said intended marriage :—

Assignment by wife to trustees of her reversionary share.

1. The wife, AS SETTLOR with the approbation of the husband (*e*) Doth hereby assign unto the trustees, ALL the said absolute and contingent shares of the wife in the parent fund, TO HOLD UNTO the trustees subject to the life interests therein of the said G. B. and H. B., IN TRUST for the wife, until the said intended marriage, and after the solemnisation thereof, UPON TRUST, that the trustees shall, as and when the same shall respectively fall into possession, call in and obtain a transfer or payment to themselves, of the shares hereinbefore assigned, and shall either permit any investments which may be transferred to them in respect, or on account, of the said shares to remain unaltered, or shall, with the consent of the husband and the wife during their joint lives and of the survivor during his or her life, and after the death of the survivor at the discretion of the trustees, sell, call in, or convert the same, and invest the money thereby produced and also any money constituting part of the same share or shares in any investment authorised by law for the investment of trust money or [*as in Precedent II.*].

Upon trusts, for obtaining transfer of the share.

Trusts of wife's fund.

2. The trustees shall pay the income of the investments for the time being representing the said shares (herein called "the wife's fund") [*for wife and husband successively during life; for issue of marriage; hotchpot clause; power of advancement; trusts in default or failure of children, as in Precedent II.*].

Power to lend part of wife's fund to husband with ancillary trusts.

3. The trustees (if they shall think fit, and without being accountable in respect of the exercise of this power) may at any time during the life of the wife, and after the premises hereinbefore assigned or any of them shall have fallen into possession, at the request in writing of the wife, raise out of the wife's fund any sum or sums not exceeding altogether £——, and advance the sum or sums so raised by way of loan to the husband at such rate of interest, for such period, and upon such terms, as the trustees in their discretion may think fit, so that the repayment of any sum so advanced with interest in the meantime at such rate as may be agreed on be secured by covenant or otherwise as may be agreed : AND the trustees shall hold every sum the repayment whereof is to be so secured, and the interest thereof, upon the same trusts, and subject to the same powers and provisions, as the corresponding sum advanced,

(*e*) Regard being had to the Married Women's Property Act, 1882, the addition of any express confirmation or covenant on the part of the husband would seem to be no longer required.

PRECEDENT VIII.

ON MARRIAGE, OF REVERSIONARY INTEREST OF WIFE, AND POLICY ON HUSBAND'S LIFE.

and the income of the investments representing the same, would have been subject to if the same had not been so advanced.

4. The trustees shall hold the said sum of £—— [*the sum assured by the policy*], and all other money (if any) to become payable under the policy, and the investments for the time being representing the same (herein called "the husband's fund"), UPON THE TRUSTS (including the trust for investment), and subject to the powers and provisions hereinbefore contained concerning the wife's fund and the income thereof, or as near thereto as the death of parties and other circumstances will permit; SAVE AND EXCEPT, that, if there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then (without prejudice to the other trusts hereinbefore declared thereof by reference), and after the death of the wife and such default or failure of children as aforesaid, the trustees shall hold the husband's fund and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained or implied by law, IN TRUST for the husband absolutely.

Trusts of husband's life policy declared by reference to wife's fund; —with variation in case no child becomes entitled.

5. The husband Doth hereby covenant with the trustees, that, if the said intended marriage shall be solemnised, he will at all times pay the said annual premium of £—— and such other money (if any) as may become payable for keeping the policy on foot, on the first day on which the same respectively ought to be paid, and will not do or knowingly suffer any thing whereby the policy may become void or voidable, or the trustees be hindered from receiving any of the money assured by or which might become payable under the same.

Covenant by husband to keep life policy on foot.

6. The trustees may, if they think fit, apply any part of the annual income, or, if that be insufficient, then any part of the capital of the wife's fund, in payment of the said annual premium or other money (if any) which may become payable for keeping the policy on foot: But any neglect by the trustees so to apply any part of the said annual income or capital, or to enforce the covenants hereinbefore contained on the part of the husband, shall not be considered a breach of trust and the trustees shall not be in anywise responsible for such neglect, nor for the policy becoming void by any means whatsoever (*f*).

Power for trustees to pay premiums, &c., out of income or capital of trust fund.

7. The trustees may accept any investments which may be offered to them in respect of the premises hereinbefore assigned, although the same may not be investments authorised by these presents, and shall have the fullest powers of settling all accounts

Trustees may accept any investments representing wife's share.

(*f*) Compare the provisions in the next Precedent, and see *Re Jewell*, [1919] 2 Ch. 161.

PRECEDENT VIII.

ON MARRIAGE, OF REVERSIONARY INTEREST OF WIFE, AND POLICY ON HUSBAND'S LIFE.

and claims whatsoever relating to the trusts of the parent settlement.

[*Power to settle questions; to appoint new trustees, and other clauses as required, as in Precedent II.*] IN WITNESS, &c. (*g*).

SCHEDULE—*Investments and cash representing the Parent Fund.*

## IX.

PRECEDENT IX.

ON MARRIAGE, OF POLICY.

SETTLEMENT, *on Marriage, of a* POLICY OF ASSURANCE *on the husband's life* (*h*).

THIS SETTLEMENT, made, &c., BETWEEN A., of &c. [*intended husband*], of the first part, B., of, &c. [*intended wife*], of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (herein called "the trustees," which expression includes the trustees or trustee for the time being of these presents), of the third part, WITNESSETH, that, in consideration of a marriage intended shortly to be solemnised between the said A. (herein called "the husband") and the said B. (herein called "the wife"):—

Assignment of policy.

1. The husband, AS SETTLOR, with the approbation of the wife, Doth hereby assign unto the trustees ALL THAT policy of assurance (herein called "the policy") in the name and on the life of the husband granted by the —— Assurance Society, dated the —— day of ——, numbered ——, for the sum of £—— and under the premium of £——, and all money payable thereunder and the full benefit thereof. TO HOLD UNTO the trustees in TRUST for the husband until the said intended marriage, and after the solemnisation thereof upon the trusts following:—

Trust for husband until marriage;

—after, on trusts;

(1) UPON TRUST to obtain payment of and receive all money assured by, or to become payable under, the policy, as and when the same shall become payable; (2) UPON TRUST, with the consent in writing of the wife, during her life, and after her death at the discretion of the trustees, to invest the money so to be received in the names [*Remainder of trusts as to invest-*

—for investment;

(*g*) Notice of the settlement should be given to the trustees of the "parent settlement," and also to the insurance office.

(*h*) This Precedent is inserted as giving the form which the settlement of a policy assumes, when such policy has been effected in the husband's name. Since, under the Policies of Assurance Act, 1867, assignees of a policy can sue in their own names, there is no material advantage in having the policy effected in the names of trustees. A form of settlement of a policy in the names of the trustees is given in the preceding Precedent.

*ments and varying investment, as in Precedents I. or II.*]; (3) UPON TRUST to pay the income of the said money and of the investments for the time being representing the same (herein called "the trust fund") to the wife during her life, but so that during her intended coverture such income shall be without power of anticipation; (4) UPON TRUST, after her death, to hold the trust fund and the income thereof IN TRUST [*for issue and children of marriage; hotchpot clause and power of advancement, as in Precedent I.*]; (5) If there shall be no child of the intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, subject to the trusts hereinbefore declared, the trustees shall hold the trust fund and the income thereof, or so much thereof as shall not have become vested or been applied under the trusts or powers herein contained or by law implied from and after the death of the wife, and such default or failure of children as aforesaid, which shall last happen, IN TRUST for the husband absolutely.

—for wife for life;

—for children, &c.

—in default of children for husband absolutely.

2. [*Covenant by husband to keep the policy on foot, as in preceding Precedent.*]

3. Any neglect by the trustees to enforce the covenant hereinbefore contained on the part of the husband, shall not be considered a breach of trust, and the trustees shall not be in anywise responsible for such neglect, nor for the policy becoming void by any means whatsoever.

Trustees not to be chargeable with breach of trust if policy not kept on foot.

4. The trustees may, if they shall think fit, upon the request in writing of the husband and the wife during their joint lives, or of the husband, after the death of the wife, sell the said policy either by way of surrender to the office granting the same, or otherwise, and in such case the net proceeds shall be held upon the trusts, and subject to the powers and provisions, which would have been applicable thereto if the same had been money assured by the policy so sold, and the husband were then dead (*i*).

Power for trustees to sell policy;

5. The trustees shall, upon such request in writing as aforesaid, permit any bonus or bonuses which shall be declared in respect of the said policy, to be applied in reduction of the annual premium (*k*). [*Power to appoint new trustees, and other*

—to apply bonuses in reduction of premium.

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(*i*) Where a settlement does not provide any fund available for payment of the premiums, such a power as that in the text is advantageous, as it enables the trustees to make the most of the policy, if they are deprived, by the husband's incapacity to pay, of any means of keeping the policy on foot. See Dav. Prec. Conv., 3rd ed., vol. iii., p. 812, n. (*p*).

(*k*) When the rules of the assurance office allow bonuses to be applied in this manner, the provision in the text may be inserted with advantage, unless sufficient funds are provided by the settlement for keeping the policy on foot.

PRECEDENT IX.

ON MARRIAGE, OF POLICY.

*clauses so far as required, as in Precedent II.*] IN WITNESS, &c. (*l*).

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## X.

PRECEDENT X.

ON MARRIAGE, OF WIFE'S STOCK, WITHOUT PROVISION FOR CHILDREN.

### SETTLEMENT, *on* MARRIAGE, *of* WIFE'S STOCK *for herself and* HUSBAND, *without Provision for Children.*

THIS SETTLEMENT, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended wife*], of the second part, and C., of, &c., D., of &c., and E., of, &c. [*trustees*] (herein called "the trustees," which expression includes the trustees or trustee for the time being of these presents), of the third part, WITNESSETH, &c.

[1. *Declaration of trust for wife till marriage.*

2. *Trusts as to investment.*

3. *Trusts for wife for life then for husband for life, if he survives, as in Precedent I.*]

Declaration of trust after death of husband and wife, in favour of wife.

4. After the death of the husband and the wife the trustees shall hold the trust fund, and the income thereof, IN TRUST for such persons and purposes, and in such manner as the wife shall, when discovert by Deed, or whether covert or discovert by Will or Codicil, appoint, AND IN DEFAULT of and subject to any such appointment. (1) If the wife shall survive the husband, then IN TRUST for the wife absolutely, but so that during her intended coverture such contingent reversionary interest shall be without power of anticipation. (2) But if the husband shall survive the wife, then IN TRUST for such persons or person as, under the law for the time being, would have become entitled thereto at the death of the wife, if she had died possessed thereof intestate without leaving the husband her surviving (*m*).

[5. *Power to appoint new trustees.*

6. *Additional clauses so far as needed, as in Precedent II.*]

IN WITNESS, &c.

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(*l*) As to giving notice of the assignment, see note at end of Precedent XLIV. in CONVEYANCES.

(*m*) The words "without having been married, &c.," which are inserted in Precedent I., are omitted, the intention being not to exclude children, even though the husband may benefit indirectly if any child dies in infancy, or attains twenty-one and dies intestate (see note at end of Precedent I.).

## XI.

SETTLEMENT, *on* MARRIAGE, *of a sum of* MONEY COVENANTED *to be paid by the* HUSBAND, *and of a sum of* STOCK, *some* FURNITURE, *and a* SHARE *of* FARMING STOCK, *belonging to the* WIFE, ISSUE *of the Marriage* NOT *being* CONTEMPLATED.

PRECEDENT XI.

ON MARRIAGE, OF SUM TO BE PAID BY HUSBAND, AND WIFE'S PROPERTY, ISSUE OF MARRIAGE NOT BEING CONTEMPLATED.

THIS SETTLEMENT, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended wife*], widow, of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (herein called "the trustees," which expression includes the trustees or trustee for the time being of these presents), of the third part, WITNESSETH that, in consideration of a marriage intended shortly to be solemnised between the said A. (herein called "the husband"), and the said B. (herein called "the wife"), and in pursuance of an agreement made on the treaty for the same :—

Covenant by husband to pay a gross sum.

1. The husband Doth hereby, with the approbation of the wife, covenant with the trustees, that if the intended marriage shall be solemnised, the husband will, within six calendar months after the solemnisation thereof, pay to the trustees the sum of £——, with interest thereon at the rate of —— per cent. per annum from the solemnisation of the said intended marriage (*n*).

Trust for investment.

2. The trustees SHALL, with the consent of the husband and the wife, during their joint lives, and of the survivor during his or her life, and after the death of such survivor at the discretion of the trustees, invest the said sum of £——, in their names [*remainder of trusts as to investment, as in Precedent I.*], AND, during the joint lives of the husband and the wife, SHALL hold the said sum of £——, and the investments for the time being representing the same (herein called "the husband's fund") upon trust to pay the income of one equal moiety thereof to the husband, AND the income of the other equal moiety thereof to the wife, without power of anticipation, AND, after the death of either of them, SHALL HOLD the husband's fund and the income thereof, UPON THE TRUSTS following, that is to say, (1) IF the wife shall die in the lifetime of the husband, IN TRUST for the husband; (2) BUT if the husband shall die in the lifetime of the wife, IN TRUST, during the life of the wife, to pay the said income to her, but so that during her said intended coverture such reversionary

And to pay income of one half to husband.

Income of other half to wife.

If wife die first, the whole in trust for husband.

If husband die first, the whole income

(*n*) As to the effect of such a covenant by a husband in the event of his bankruptcy, see Bankruptcy Act, 1914, sect. 42, sub-sects. 2 and 3.

If payment within the appointed time is not intended to be enforced, the trustees must be protected from liability by such a proviso as that in Precedent XIII.

PRECEDENT XI.

ON MARRIAGE, OF SUM TO BE PAID BY HUSBAND, AND WIFE'S PROPERTY, ISSUE OF MARRIAGE NOT BEING CONTEMPLATED.

life interest shall be without power of anticipation; AND from and after her death, IN TRUST for such persons for such purposes and in such manner as the husband shall, by Deed or Will or Codicil, appoint; AND IN DEFAULT of and subject to any such appointment, IN TRUST for such persons or person as, under the law for the time being, would have become entitled thereto, at the death of the husband, had he died possessed thereof intestate without leaving the wife him surviving.

to wife for life, and capital in trust for husband's appointees. And in default of appointment, for his next-of-kin.

3. The wife, AS SETTLOR, with the approbation of the husband, Doth hereby assign unto the trustees, FIRST, all that sum of £—— Stock now standing in the name of, and belonging to, the wife: SECONDLY, all the furniture, plate, and plated articles, ornaments, china, linen, glass, books, pictures, and household effects, which now are in or about the house in which she, the wife, is now residing at —— (all which last-mentioned premises are herein called "the furniture and household effects"): AND THIRDLY, all her share and interest of and in the horses, cattle, sheep, pigs, harness, carriages, carts, implements of husbandry, corn, hay, and live and dead farming stock of every kind, now used or employed in or upon the farm at —— aforesaid, now in the occupation of the wife, or of the trustees of the Will of J. D., her late husband (all which last-mentioned premises are herein called "the share of farming stock"), TO HOLD the said Stock, the furniture and household effects, and the share of farming stock UNTO the trustees, (1) IN TRUST for the wife until the said intended marriage; (2) AFTER the solemnisation thereof, UPON TRUST that the trustees shall either permit the said Stock, or any part thereof, to remain unaltered, or shall, upon the direction in writing of the wife during her life, and after her death, at the discretion of the trustees, sell the same or any part thereof: AND SHALL, during the life of the wife, permit the whole or any part of the furniture and household effects to be used and enjoyed by the wife, or shall, upon the direction in writing of the wife, sell the same or any part thereof, in such manner as the wife shall in writing direct; and if any part of the said premises shall, at the death of the wife, remain unsold, shall forthwith sell the same in such manner as the trustees shall think fit; AND SHALL, as soon as conveniently may be after the solemnisation of the said intended marriage, sell, call in, and convert into money the share of farming stock; AND SHALL, upon the direction in writing of the wife, during her life, and after her death, at the discretion of the trustees, invest the money produced by the sale, calling in and conversion into money of the said Stock, the furniture and household effects, and the share of farming stock, or any of them, or any part or parts thereof

Assignment by wife;

—of sum of stock;

—furniture in a house.

Of share of farming stock.

In trust for wife until marriage.

Trusts to sell stock on direction of wife;

—to permit her to use furniture during her life, and to sell after her death;

—to sell the farming stock.

Trust for investment.

PRECEDENT XI.

ON MARRIAGE, OF SUM TO BE PAID BY HUSBAND, AND WIFE'S PROPERTY, ISSUE OF MARRIAGE NOT BEING CONTEMPLATED.

respectively, in the names, or under the legal control of the trustees, in or upon any of the investments hereinbefore authorised for the investment of the said sum of £—— (*o*); and may from time to time, upon such direction or at such discretion as aforesaid, vary such investments for others of any kind hereby authorised; AND SHALL pay the income of the said investments (herein called "the wife's fund"), &c. [*trusts for wife and husband successively during their lives, as in Precedent I., substituting* "the wife's fund" *for* "the trust fund"]. AND AFTER the death of the wife and the husband shall hold the wife's fund, and the income thereof, IN TRUST for all the children or any the child of the wife, now living or hereafter to be born, who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry under that age, and if more than one in equal shares (*p*) [*advancement clause, as in Precedent I.; trust on failure of children entitled under the preceding trust for the wife, substituting* "the wife's fund" *for* "the trust fund" *and* "child of the wife," *as in Precedent I., for* "child of the said intended marriage," *and omitting* "default or"].

Income to wife during joint lives, and to survivor.

Trust for the wife's children equally.

4. PROVIDED that, if in the execution of any of the trusts or powers hereof, it shall become necessary to divide or apportion between two or more persons, the several funds, the trusts whereof are hereinbefore declared, and all or any of the money or investments for the time being representing the same, shall be so blended together that the original funds from which the same shall respectively have proceeded cannot be distinguished, the trustees may divide or apportion the said money or investments between or among the several persons entitled thereto in such manner as to them shall seem just, and such division or apportionment shall be as conclusively binding on all persons interested in the premises as if it had been made by a Court of competent jurisdiction.

Power to apportion blended funds.

5. The trustees may decide [*remainder of power to settle questions and deal with the premises as absolute owners; power to appoint new trustees; and additional clauses, so far as appropriate, as in Precedent II.; adding after* "breach of trust" *the words,* "and the trustees shall not be answerable for loss,

Power to appoint new trustees, &c.

(*o*) The sum covenanted to be paid by the husband.

(*p*) The children here intended to be provided for are infant children of a previous marriage; but the words are sufficiently extensive to include children of the contemplated marriage. If any of the children of the previous marriage are adult, the trust would be for children who being sons or a son have attained or shall attain twenty-one, or being a daughter or daughters have attained or shall attain that age or have married or shall marry under that age, and the trust on failure of children would of course be omitted.

PRECEDENT XI.

destruction, waste, or damage of or to the furniture and household effects, and farming stock, or any part or parts thereof respectively." IN WITNESS, &c.

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## XII.

PRECEDENT XII.

ON MARRIAGE, OF WIFE'S PORTION, AND SUM TO BE PAID BY HUSBAND'S FATHER.

SETTLEMENT *on* MARRIAGE *of a sum raiseable for* WIFE *under the trusts of a* PORTIONS TERM, *and a sum secured by the* COVENANT *of the* HUSBAND'S FATHER.

THIS SETTLEMENT, made, &c., BETWEEN A. B., of, &c. [*intended husband*], of the first part, C. D., of, &c. [*intended wife*], of the second part, E. B., of, &c. [*husband's father*], of the third part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. [*trustees*] (herein called "the trustees," which expression includes the trustees or trustee for the time being of these presents), of the fourth part. WHEREAS, by virtue of a Settlement (herein called "the settlement"), dated, &c. [*before* 1926], and made between [*parties*] (being a settlement made in consideration of the marriage afterwards solemnised between the said —— and ——), the said C. D. is absolutely entitled to the sum of £——, being one equal fourth part of the sum of £——, raiseable for portions of younger children of the said marriage, under the trusts of a term of —— years (*q*), limited by the settlement in estates situate in the County of ——; AND WHEREAS a marriage is intended shortly to be solemnised between the said A. B. (herein called "the husband"), and the said C. D. (herein called "the wife"); AND WHEREAS on the treaty for the intended marriage, it was agreed that the wife should assign the said sum of £—— [*sum raiseable under term*] and the interest for the same in manner hereinafter appearing, and that the said E. B. should enter into the covenants hereinafter contained. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the said intended marriage.

Recital that wife is entitled to a share of money raiseable under trusts of term.

—of intended marriage

—of agreement to assign;

—of agreement by husband's father.

1. The wife, AS SETTLOR, with the approbation of the husband, Doth hereby assign unto the trustees, ALL THAT the principal sum of £—— to which the wife is so entitled as aforesaid, being one equal fourth part of the said sum of £——, raiseable under the said term of years and all interest due and to become due

Assignment of sum of money.

(*q*) The term so created will become an equitable term: see S. L. Act, 1925, 2nd Sch. para. 1 (6).

PRECEDENT XII.

ON MARRIAGE, OF WIFE'S PORTION, AND SUM TO BE PAID BY HUSBAND'S FATHER.

for the same, TO HOLD UNTO the trustees, IN TRUST for the wife until the said intended marriage, and after the solemnisation thereof, UPON THE TRUSTS hereinafter declared concerning the same (*r*).

Trust for wife till marriage;

—after, on trusts declared.

2. The said E. B. doth hereby covenant with the trustees, that he the said E. B., or his personal representatives, will, within six calendar months from the solemnisation of the said intended marriage, pay to the trustees the sum of £——, with interest thereon at the rate of — per cent. per annum from the day of such solemnisation, without deduction; AND if the said sum of £—— shall not be paid within the six calendar months aforesaid, will pay to the trustees interest on the said sum of £——, or on so much thereof as shall for the time being remain unpaid, at the rate aforesaid, by equal half-yearly payments, and will make the first such payment at the end of six calendar months from the solemnisation of the said intended marriage.

Covenant by husband's father;

—to pay to trustees sum of money,

—and interest.

3. PROVIDED that the trustees shall not compel payment of the said sum of £——, or any part thereof, during the joint lives of the husband and the wife, or the life of the survivor, without their, his, or her consent in writing, and shall not be answerable for any loss occasioned by delay or omission to compel such payment, whether during such lives or life, or afterwards (*s*).

Trustees not to be bound to enforce payment.

4. After the solemnisation of the said intended marriage, the trustees shall either permit the said sum of £—— [*sum raiseable under trusts of term*], to remain on the present security for the same, or shall, with the consent of the husband and the wife during their joint lives, or of the survivor during his or her life, and after the death of such survivor, at the discretion of

Declaration of trust after the marriage as to both sums;

(*r*) Such assignment should generally be made by a separate instrument, which would be recited in this settlement.

(*s*) If it is not intended that the money shall be paid according to the strict letter of the covenant, a proviso of this nature should be inserted to protect the trustees from the liability they would otherwise incur by abstaining from requiring payment at the time appointed. See Dav. Prec. Conv., vol. iii., 3rd ed., p. 802, n. (*k*). The covenant might be, "that if the said intended marriage shall take place, he the said E. B., or his personal representatives, will at such time or times during his life as he shall think fit, or within six calendar months after his death, pay to the trustees the sum of £——, and in the meantime and until the whole of the same sum shall have been so paid will pay, &c." And in that case the proviso would be unnecessary. The same form, with a suitable modification as to the interest, may be adopted, where the covenantor contemplates payment after his death, and does not undertake to pay interest in his lifetime. In that case succession duty will be payable on the sum secured when it falls in by the death of the covenantor. See *Att.-Gen.* v. *Montefiore* (1888), 21 Q. B. D. 461.

PRECEDENT XII.

ON MARRIAGE, OF WIFE'S PORTION, AND SUM TO BE PAID BY HUSBAND'S FATHER.

the trustees, call in the same, and invest the same and also the said sum of £—— [*sum secured by covenant*], as and when the same shall be respectively received in the names, or under the legal control of them, &c. [*remainder of trusts as to investment and varying investment, as in Precedent I.*]

—for investment; —to pay an annual sum to wife during joint lives.

5. The trustees (1) shall, during the joint lives of the husband and the wife, out of the income of the said sums, and of the investments for the time being representing the same (herein called "the trust fund"), pay to the wife the yearly sum of £——, to be payable by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, and shall make the first such payment on such of the aforesaid days as shall happen next after the solemnisation of the said intended marriage, and the wife shall not have power to deprive herself of the said yearly sum of £—— in anticipation; and (2) shall pay the residue of the said income to the husband during the joint lives of the husband and the wife, and (3) after the death of either of them, shall pay the whole of the said income to the survivor during his or her life, but so that as regards the wife such contingent reversionary interest shall during her said intended coverture be without power of anticipation [*declaration of trust, after death of the husband and wife, for issue of intended marriage, as they or survivor shall appoint; in default of appointment, in trust for children equally, with hotchpot and advancement clauses, as in Precedent I.; in default of children for husband absolutely, as in Precedent IX.* (*t*); *Power to appoint new trustees, and other clauses, so far as required, as in Precedent II.*] IN WITNESS, &c.

Residue of income to husband during joint lives.

Whole income to survivor, &c.

## XIII.

PRECEDENT XIII.

ON MARRIAGE, OF STOCK, THE YOUNGER CHILDREN TAKING IN EXCLUSION OF AN ELDEST SON.

SETTLEMENT, *on* MARRIAGE, *of* STOCK, *settled by father of intended wife, on the younger children of the marriage, in exclusion of an eldest son entitled to settled land, with* COVENANT *by father of intended husband to pay an* ANNUITY.

THIS SETTLEMENT, made, &c., BETWEEN A. B., of, &c. [*intended husband*], of the first part, C. D., of, &c. [*intended wife*], of the second part, E. D., of, &c., the father of the said C. D., of the third part, F. B., of &c., the father of the

(*t*) In the more usual case of the property settled by the wife being, in default of children, secured to herself or her next of kin, the ultimate trust will be in the form given in Precedent I.

PRECEDENT XIII.

ON MARRIAGE, OF STOCK, THE YOUNGER CHILDREN TAKING IN EXCLUSION OF AN ELDEST SON.

said A. B., of the fourth part, and G. H., of, &c., I. K., of, &c., and L. M., of, &c. (herein called "the trustees," which expression includes the trustees or trustee for the time being hereof), of the fifth part, WITNESSETH, that, in consideration of a marriage intended shortly to be solemnised between the said A. B. (herein called "the husband"), and C. D. (herein called "the wife"), IT IS HEREBY AGREED as follows :—

Declaration of trust of stock.

1. The trustees shall hold the sum of £—— Stock, lately transferred by the said E. D., with the assent of the husband and the wife, into the names of the trustees, IN TRUST for the said E. D. until the said intended marriage.

In trust for wife's father until the marriage.

2. After the solemnisation thereof the trustees shall either permit the said Stock or any part thereof to remain unaltered, or shall, with the consent in writing of the husband and the wife, during their joint lives, and of the survivor during his or her life, and after the death of such survivor, at the discretion of the trustees, sell the same or any part thereof, and invest the money produced thereby in their names, or under their legal control in [*remainder of trusts as to investment and varying investment, as in Precedent I.*]

Trusts as to investment.

Trusts of income for husband for life;

3. The trustees shall pay the income of the said Stock, and of the investments for the time being representing the same (herein called "the trust fund"), to the husband during the joint lives of himself and the wife, AND after the death of either of them to the survivor, during his or her life, but so that as regards the wife such contingent reversionary interest shall during her intended coverture be without power of anticipation.

—for survivor for life.

Trusts for issue, exclusive of eldest son and his issue, as husband and wife appoint (*u*);

4. After the death of such survivor, the trustees shall hold the trust fund, and the income thereof, (1) IN TRUST for all or any of the issue of the intended marriage, other than an eldest or only son for the time being entitled to the first interest in tail male, under the limitations of a Settlement [*Trust Instrument*], dated, &c., and made between [*parties*], [and the issue of such eldest or only son] in such manner in every respect as the husband and wife shall by Deed or writing jointly appoint; AND in default of and subject to any such appointment, as the survivor shall by Deed, or Will, or Codicil, appoint; AND in default of and subject to any such appointment, (2) IN TRUST for all the children or any the child of the said intended marriage (other than an eldest or only son, and any other son or sons

—in default, as survivor appoints;

—in default for younger children of marriage;

(*u*) It is not unusual, and is perhaps more convenient, to exclude the eldest son only from the trust in default of appointment, thus leaving it within the discretion of the husband and wife to make an appointment in his favour if they please. As to the form of the trust in other respects, see note to Precedent I.

PRECEDENT XIII.

ON MARRIAGE, OF STOCK, THE YOUNGER CHILDREN TAKING IN EXCLUSION OF AN ELDEST SON.

who before attaining the age of twenty-one years shall become entitled to the first interest in tail male under the limitations aforesaid), who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, and if more than one, in equal shares. AND IF there shall be no child, other than as aforesaid, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry under that age, then (3) IN TRUST for the eldest or only son of the intended marriage who shall attain the age of twenty-one years [*hotchpot and advancement clauses, as in Precedent I.*]

—and in default of such, for eldest son.

Disposition in default of children, in favour of wife.

5. If there shall be no child of the intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry [*remainder of dispositions, in default of children entitled, in favour of wife, as in Precedent I.*]

Covenant to pay an annuity to trustees.

6. The said F. B. doth hereby, with the approbation of the husband and the wife, covenant with the trustees, that, if the said intended marriage shall be solemnised, he the said F. B. will pay to the trustees, during the joint lives of himself and the wife, the annual sum of £——; and if the wife shall die in the lifetime of the covenantor, then, during the remainder of the life of the covenantor, if and so long as the husband or any issue of the marriage shall be living, the annual sum of £——, such annual sum of £—— or £——, as the case may be, to be paid by equal quarterly payments on the usual quarter days; and the first payments thereof respectively to be made as to the said annual sum of £—— on such of the said quarterly days as shall happen next after the solemnisation of the said intended marriage, and as to the said annual sum of £—— on such of those days as shall happen next after the death of the wife.

Trusts of annuity.

7. The trustees shall pay and apply the said annual sum of £—— or £—— as the case may be, to the persons and in the manner to whom and in which the income of the trust fund shall for the time being be payable or applicable. [*Power to appoint new trustees, and other clauses, so far as applicable, as in Precedent II.*] IN WITNESS, &c.

## XIV.

SETTLEMENT, *on* MARRIAGE, *of* MONEY *to arise from* FREEHOLDS *conveyed to* TRUSTEES *by a* DEED *of* EVEN DATE, *in* TRUST *for* SALE (*x*). *The Husband takes a* CONTINGENT REVERSIONARY *and* PROTECTED LIFE INTEREST.

PRECEDENT XIV.

ON MARRIAGE, OF PROCEEDS OF FREEHOLDS CONVEYED IN TRUST FOR SALE BY DEED OF EVEN DATE, HUSBAND TAKING A PROTECTED INTEREST.

THIS SETTLEMENT, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended wife*], of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (herein called "the trustees," which expression includes the trustees or trustee for the time being hereof), of the third part. WHEREAS a marriage is intended shortly to be solemnised between the said A. (herein called "the husband") and the said B. (herein called "the wife"): AND WHEREAS by a Conveyance of even date with, but executed before, these presents, and made between the same persons as are parties hereto, certain hereditaments in the Parish of ——, in the County of ——, have been conveyed to the trustees, in fee simple, in trust for the wife, in fee simple, until the intended marriage, and after the solemnisation thereof, upon trust that the trustees shall, with such consent or at such discretion as therein mentioned, sell the same, and hold the net money to arise from such sale of the said hereditaments, and also the rents and profits thereof until sale, upon the trusts to be declared by a Deed of even date therewith (meaning these presents). NOW THIS DEED WITNESSETH as follows:—

Recital of intended marriage;

—of the conveyance of real estate by a deed of even date, to trustees, in trust to sell, &c.

1. The trustees shall, with the consent in writing of the husband and the wife, during their joint lives, and of the survivor during his or her life, and after the death of such survivor, at the discretion of the trustees, invest the said net money to arise from any sale under the hereinbefore recited conveyance [*remainder of trusts as to investment and varying investment, as in Precedent II.*].

Declaration of trust of money to arise from sale.

Trusts as to investment.

2. The trustees shall pay the income of the said money and of the investments for the time being representing the same (herein called "the trust fund") to the wife during her life, but during her intended coverture without power of anticipation.

Trust for wife for life;

3. After the death of the wife, if the husband shall survive her, the trustees shall pay the income of the trust fund to the husband during his life or until he (whether before or after the termination of the prior life interest) shall do or attempt to do or suffer something, or until any event happens whereby the

—and after her death for husband until alienation.

(*x*) The deed referred to is the conveyance on trust for sale in Precedent V. of CONVEYANCES, and the land is supposed to have belonged to the wife.

PRECEDENT XIV.

ON MARRIAGE, OF PROCEEDS OF FREEHOLDS CONVEYED IN TRUST FOR SALE BY DEED OF EVEN DATE, HUSBAND TAKING A PROTECTED INTEREST.

same or some part thereof would, if belonging absolutely to him, become vested in or payable to some other person or persons [or cease to become payable to himself (*y*)]. PROVIDED that his consent to the exercise of any express or implied power of advancement shall not be deemed to fall within the above conditions.

Power to apply income after determination of life interest by alienation;

4. After the death of the wife and the failure or determination of the trust hereinbefore declared of the income in favour of the husband, if the same shall fail or determine in his lifetime, the trustees shall, during the remainder of the life of the husband, if the trustees shall in their absolute discretion think fit, pay or apply such income or any part thereof for or towards the maintenance and personal support [or otherwise for the benefit] of the husband and his wife (if any) and child or children and other issue for the time being in existence (whether by the intended or any future marriage (*z*)), or of such one or more, to the exclusion of the others or other of such objects of the present discretionary trust or power, in such manner as the trustees shall think proper, AND during the rest of the life of the husband shall from time to time pay or apply all the residue not applied under the discretionary trust or power lastly hereinbefore contained of the same income, or the whole of such income if no part thereof shall be so applied, in the manner in which the same would be payable or applicable if the husband were then dead.

—unapplied income during his life to be applied as if he were dead.

5. After the death of the survivor of the husband and the wife, the trustees shall hold the trust fund and the income thereof IN TRUST, &c. [*for issue and children of the marriage; hotchpot clause; power of advancement; and ultimate trusts, as in Precedent I.*].

Trusts for application of rents until sale.

6. [The trustees shall, after solemnisation of the marriage, and until sale of all the said hereditaments, in addition to any provisions implied by law, pay and apply the net rents and profits and yearly produce [including the proceeds of the sale of timber (*a*)] of the unsold part thereof (after payment thereout

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(*y*) See *Re Brewer's Settlement*, [1896] 2 Ch. 503, where the fund had been lent to and dissipated by the husband. The case suggests the desirability of adding these words, when there is a power to lend the fund to the husband. See also *Re Carew* (1910), 103 L. T. 658; 55 Sol. J. 140. Compare T. Act, 1925, sect. 33, as to "protective trusts."

(*z*) See *Re Chance*, [1918] W. N. 34; 62 Sol. J. 349, where the wife who predeceased appointed to the husband, and it was held that his life interest did not merge in the reversion, because of the possibility of his having children by a future marriage.

(*a*) The words in brackets should be adopted with caution, and only in cases where it is intended that the person beneficially entitled to the income should have proceeds of timber as income. Where there is an appreciable

of all rates, taxes, expenses of repairs and insurance, and other outgoings), in the manner in which the income of the investments representing the net money arising from a sale under the trust for sale in the hereinbefore recited conveyance contained, would be for the time being payable and applicable, if the premises had then been sold, and the net money arising from such sale had been invested as hereby directed (*b*).] [*Power to appoint new trustees, and other clauses, so far as required, as in Precedent II.; and compare next Precedent.*] IN WITNESS, &c. (*c*).

PRECEDENT XIV.

ON MARRIAGE, OF PROCEEDS OF FREEHOLDS CONVEYED IN TRUST FOR SALE BY DEED OF EVEN DATE, HUSBAND TAKING A PROTECTED INTEREST.

## XV.

SETTLEMENT, *on* MARRIAGE, *of the* PROCEEDS *of sale of a Leasehold House, and of* STOCK *belonging to the* HUSBAND, *and of* BONDS *belonging to the* WIFE'S FATHER: PROVISO *enabling the married couple to* OCCUPY *the* HOUSE *as a* RESIDENCE.

PRECEDENT XV.

ON MARRIAGE, OF PROCEEDS OF SALE OF LEASEHOLDS AND STOCK SETTLED BY HUSBAND, AND BONDS SETTLED BY WIFE'S FATHER.

THIS SETTLEMENT, made, &c., BETWEEN A. B., of, &c. [*intended husband*], of the first part, C. D., of, &c. [*intended wife*], of the second part, E. D., of, &c., the father of the said C. D., of the third part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. [*trustees*] (herein called "the trustees," which expression includes the trustees or trustee for the time being of these presents), of the fourth part. WHEREAS a marriage is intended shortly to be solemnised between the said A. B. (herein called "the husband") and C. D. (herein called "the wife"). AND WHEREAS, in pursuance of an agreement made on the treaty for the intended marriage, by an Assignment of even date with but executed before these presents, and made

Recital of intended marriage.

Of assignment of leaseholds in trust for husband until marriage.

quantity of timber special provision should be made. Generally, "rents and profits" do not include proceeds of timber sold. (See Dav. Prec. Conv., 3rd ed., vol. iii., p. 288, and authorities cited there in note (*b*), and see also *Vaizey on Settlements* (1887), pp. 896, &c.; *Re Terry*, [1918] W. N. 273; 62 Sol. J. 716; *Re Londesborough*, [1923] 1 Ch. 500. As to the provisions of the S. L. Act, 1925, as to trees or timber see sects. 66, 88, 89, 102. Windfalls may also be included if thought fit: see *Re Harrison* (1884), 28 Ch. D. 220.

(*b*) Where there was no provision as to the destination of rents and profits until sale, the person entitled to the income of the investments representing the proceeds was held entitled to the rents and profits until sale: *Re Darnley*, [1907] 1 Ch. 159; *Re Oliver*, [1908] 2 Ch. 74; and see now L. P. Act, 1925, sect. 28, sub-sect. 2, which, except in special circumstances, renders the insertion of this clause unnecessary.

(*c*) If the freeholds settled consisted of a dwelling-house, a proviso might be added enabling the married couple to occupy the premises as a residence: see next Precedent.

PRECEDENT XV.

ON MARRIAGE, OF PROCEEDS OF SALE OF LEASEHOLDS AND STOCK SETTLED BY HUSBAND, AND BONDS SETTLED BY WIFE'S FATHER.

between, &c. [*parties*] (*d*), the husband, with the approbation of the wife, has assigned a messuage and hereditaments comprised in and demised by a Lease (herein called "the lease") dated, &c., and made between [*parties*], unto the trustees, for the residue of the term of —— years granted by the lease at the rent and subject to the covenants by the lessee and conditions therein reserved and contained, in trust for the husband until the intended marriage, and after the solemnisation thereof, upon trust that the trustees shall, with such consent or at such discretion as therein mentioned, sell the same and hold the net money to arise from such sale, and also the rents and profits thereof until sale upon the trusts declared by a Deed therein referred to, meaning these presents. AND WHEREAS in further pursuance of the said agreement, the husband has, with the approbation of the wife, lately transferred the sum of £——, —— Stock into the names of the trustees, to be held by them in trust for the husband until the intended marriage, and after the solemnisation thereof, upon the trusts hereinafter declared concerning the same. AND WHEREAS the said E. D. (herein called "the wife's father") is possessed of or entitled to the three Bonds, hereinafter described, to secure the principal sums of £——, £——, and £——, with interest at the rate of —— per cent. per annum, which said principal sums, with some interest thereon, are now owing on the same Bonds, and upon the treaty for the said marriage it was agreed that the wife's father should assign the said principal sums and interest, to the trustees, in manner hereinafter appearing. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement and in consideration of the intended marriage :—

—and after in trust to sell;

—to hold the sale money on trusts after declared.

That husband has transferred stock to trustees till marriage, and after on trusts declared.

That wife's father is possessed of bonds.

Assignment of bond debts.

1. The wife's father as SETTLOR, and with the approbation of the husband and the wife, Doth hereby assign unto the trustees ALL THOSE three Bonds under the common seal of the Mayor, Aldermen, and Burgesses of ——, dated the —— day of ——, and numbered ——, ——, and ——, and the said principal sums of £——, £——, and £——; and all interest due and to grow due thereon; and the full benefit of the security for the same TO HOLD UNTO the trustees, IN TRUST for the wife's father until the intended marriage, and after the solemnisation thereof, UPON THE TRUSTS hereinafter declared of the same.

In trust for settlor till marriage, and after on trusts declared.

Declaration of trusts.

2. After the solemnisation of the intended marriage, the trustees (1) SHALL either allow the said sum of £—— —— Stock, and the said sums of £——, £——, and £——, or any of them, or any part thereof respectively, to remain unaltered, or shall,

(*d*) For the deed here referred to, see Precedent XXVII. in CONVEYANCES.

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ON MARRIAGE, OF PROCEEDS OF SALE OF LEASEHOLDS AND STOCK SETTLED BY HUSBAND, AND BONDS SETTLED BY WIFE'S FATHER.

with the consent of the husband and the wife, during their joint lives, and of the survivor during his or her life, and after the death of such survivor, at the discretion of the trustees, sell, call in, or convert into money the same of any of them, or any part thereof respectively, and shall with such consent or at such discretion as aforesaid invest the money produced thereby, and also the net money produced by the sale of the said leasehold premises, in the names of the trustees, in any investments then authorised by law for the investment of trust money (*e*), and may with such consent or at such discretion as aforesaid, vary the said investments, into or for any others so authorised; (2) SHALL pay the income of the said £—— —— Stock, sums and net money, and of the investments for the time being representing the same respectively (herein called "the trust fund") to the husband during his life; AND AFTER his death if the wife shall survive him to the wife during her life, but so that during her intended coverture such reversionary life interest shall be without power of anticipation; (3) AFTER the death of the survivor of the husband and the wife, shall hold the trust fund, and the income thereof; IN TRUST [*for issue of marriage as husband and wife, or survivor, shall appoint: In default of appointment, for children of marriage; hotchpot, advancement clauses, as in Precedent I.*]

Trust for investment.

Trust of income for husband for life;

—for wife for life (*f*).

After death of husband and wife.

3. If there shall be no child of the said intended marriage, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then, without prejudice to the trusts hereinbefore declared, the trustees (1) SHALL hold so much of the trust fund as represents the said £—— —— Stock, and the net money produced by the sale of the leasehold premises, and the income thereof respectively, or so much thereof as shall not have become vested, or been applied under any of the trusts or powers herein contained or by law implied, from and after the death of the wife, and such default or failure of children as aforesaid, which shall last happen, IN TRUST for the husband absolutely; (2) SHALL hold so much of the trust fund as represents the said sums of £——, £——, and £——, and the income thereof, or so much thereof as shall not have become vested, or been applied, under any of the trusts or powers herein contained, or by law implied, from and after the death of the husband and the wife, and such default or failure of children as aforesaid, which shall last happen, IN TRUST for such person or persons and in such manner as the wife shall when discovert by

Capital for issue of marriage as husband and wife or survivor appoint.

Disposition in default of children entitled under preceding trusts.

As to husband's property.

As to sums settled by wife's father.

(*e*) See more extensive powers of investment in Precedent II.

(*f*) If, as is more usual, the first life interest in the property settled by the wife's father were given to her, the trusts during the lives of husband and wife would take the form given in Precedent II.

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ON MARRIAGE, OF PROCEEDS OF SALE OF LEASEHOLDS AND STOCK SETTLED BY HUSBAND, AND BONDS SETTLED BY WIFE'S FATHER.

Deed, or whether covert or discovert by Will or Codicil appoint, AND IN DEFAULT of and subject to any such appointment IN TRUST for the wife's father absolutely (*g*).

4. After the solemnisation of the said intended marriage the husband during his life, and after his death, the wife (if she shall survive him), during her life, so long as he or she shall think fit, may occupy the leasehold premises as a residence without paying any additional rent for the same, the husband or wife nevertheless paying the rent reserved by the lease, and performing and observing the covenants by the lessee, and conditions therein contained, and keeping the trustees fully indemnified against all claims, demands, and liability in respect thereof. [*Power to settle questions and to appoint new trustees and other clauses as required, as in Precedent II.; and see preceding Precedent.*] IN WITNESS, &c.

Proviso that house held in trust for sale may be used as a residence (*h*).

## XVI.

PRECEDENT XVI.

ON MARRIAGE, OF TWO FUNDS WITH LIFE INTERESTS DETERMINABLE ON REMARRIAGE

SETTLEMENT *on* MARRIAGE *of* TWO FUNDS *belonging respectively to the* HUSBAND *and the* WIFE, EACH *of whom takes a* REVERSIONARY LIFE INTEREST *in the* OTHER'S *Fund* DETERMINABLE *on* REMARRIAGE (*i*).

THIS SETTLEMENT, made, &c., BETWEEN A. B., of &c. [*intended husband*], of the first part, C. D., of, &c. [*intended wife*], of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c., [*trustees*] (herein called "the trustees," which expression includes the trustees or trustee for the time being of these presents), of the third part. WHEREAS a marriage is intended shortly to be solemnised between the said A. B. (herein called "the husband") and C. D. (herein called "the wife");

Recital of intended marriage;

(*g*) As the wife in the event of her surviving the husband can under her power of appointment deal in any way she thinks fit with this reversion, it has been considered that the absolute trust for the wife, in that event, which was inserted in some former editions, may be omitted as superfluous.

(*h*) This clause is not strictly necessary, because the parties might occupy the house as tenants of the trustees, and it is usually so arranged. This form might be adopted to a freehold house settled upon trust for sale, saying "may occupy the premises as a residence without paying any rent, but paying all outgoings (including costs of repairs and insurance) and keeping, &c." The right of the trustees to indemnity is provided for by general law (see *Matthews* v. *Ruggles-Brise*, [1911] 1 Ch. 194), but a covenant by the husband to pay the rent, &c. (whether occupying the house or not), and to indemnify the trustees is sometimes inserted: see Dav. Prec. Conv., vol. iii., p. 879.

(*i*) This limitation, though not unfrequently desired by the parties, is not to be recommended.

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AND WHEREAS, under the Will dated the —— day of ——, ——, of M. B., who died on the —— day of ——, and whose said Will was proved on the —— day of —— in the —— Registry by the executors therein named, the husband, as one of the children of the testator, is entitled in reversion expectant upon the death or future marriage of N. B., widow of the testator, and mother of the husband, to one equal fourth share, or some other share or shares in the residuary estate of the testator, which is now represented by the investments specified in the First Schedule hereto, and standing in the names or under the control of L. M. and N. O. as the trustees of the said will, and in the income thereof, subject to the interest of the said N. B. in the same income whilst she continues the widow of the testator. —of husband's title to share in a reversionary fund under a will;

AND WHEREAS, upon the treaty for the intended marriage, it was agreed that the sum of £——, part of or to be raised out of the share or shares to which the husband is entitled as aforesaid, and the investments representing the same should be assigned to the trustees in manner hereinafter appearing upon the trusts hereinafter declared concerning the same. —of agreement to assign a sum of cash out of his share;

AND WHEREAS the wife, in pursuance of an agreement, made on the treaty for the intended marriage, and with the approbation of the husband, has transferred into the names of the trustees the investments belonging to her which are specified in the Second Schedule hereto, to the intent that the said investments may be held In trust for the wife, until the intended marriage, and after the solemnisation thereof Upon the trusts hereinafter declared concerning the same. —of transfer by wife to trustees of investments belonging to her.

NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the intended marriage :—

1. The husband AS SETTLOR, with the approbation of the wife, Doth hereby assign unto the trustees ALL that sum of £——, part of or to be raised out of ALL that one equal fourth share, or other the share or shares to which the husband is entitled as aforesaid, in the residuary estate of the testator M. B., and in the investments representing the same, TOGETHER with a corresponding proportionate part of the income of the same share or other share or shares as from the death or future marriage of the said N. B., TO HOLD (subject to the aforesaid interest of the said N. B. in the income) UNTO the trustees In trust for the husband, until the said intended marriage, and after the solemnisation thereof, Upon the trusts hereinafter declared concerning the same. Assignment by husband of sum of cash to be raised out of his share. In trust for husband until marriage and afterwards on trusts declared.

2. THE trustees shall either allow all investments which shall be appropriated and transferred to them in or towards satisfaction of the said sum of £—— hereinbefore assigned (after the said share or shares shall have fallen into possession) and the investments specified in the Second Schedule hereto so transferred to Declaration of trust of investments or money towards

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ON MARRIAGE, OF TWO FUNDS WITH LIFE INTERESTS DETERMINABLE ON REMARRIAGE.

them as aforesaid to remain in the actual state of investment thereof respectively for the time being, or shall sell or call in, or otherwise convert into money, the same or any of them, or any part thereof respectively, and shall invest the money produced thereby, and also all money which shall be paid to or received by the trustees in or towards satisfaction of the said sum of £—— in the names [*remainder of trusts as to investment, as in Precedent II.*], and may from time to time vary such investments for others of any kind hereby authorised : PROVIDED that no sale, calling in, or conversion or investment, or variation of investment, shall be made (*k*) during the joint lives of the husband and the wife without their consent in writing, nor after the death of such one of them as shall first die, so far as regards any investments, to the income whereof the survivor shall for the time being be entitled under the trusts hereinafter declared, without his or her consent in writing.

satisfaction of assigned sum and of investments in Second Schedule.

Proviso as to consents to investments.

Trust of income of husband's fund;

—for husband for life,

—and after, for wife until death or remarriage,

—of wife's fund;

—for wife for life,

—and after, for husband until death or remarriage.

3. The trustees shall pay the income of the said sum of £—— hereinbefore assigned, and of the investments for the time being representing the same (herein called "the husband's fund"), unto the husband during his life, and after his death (if the wife shall survive him) unto the wife until she shall die or marry again, but so that during her intended coverture this contingent reversionary interest shall be without power of anticipation.

4. The trustees shall pay the income of the investments specified in the Second Schedule hereto, and of the investments for the time being representing the same (herein called "the wife's fund") unto the wife during her life, but during her intended coverture without power of anticipation : And after the death of the wife (if the husband shall survive her) shall pay the same income unto the husband until he shall die or marry again.

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(*k*) In lieu of the remainder of this clause it may be sometimes convenient to use the following form :—

"So far as regards the husband's fund (as hereinafter defined), without the respective consent in writing of the husband during his life and of the wife until her death or remarriage, and so far as regards the wife's fund (as hereinafter defined), without the respective consent in writing of the wife during her life, and of the husband until his death or remarriage."

It may be observed that the words "the failure or determination of the interest hereby limited to him [her] in the income of that fund" will throughout the Precedent be appropriate instead of the references to death or second marriage, and should be used if these events are associated with other contingencies, such as bankruptcy, or failure of issue. See Precedents III. and XIV.

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ON MARRIAGE, OF TWO FUNDS WITH LIFE INTERESTS DETERMINABLE ON REMARRIAGE.

5. The trustees shall hold the capital and income of the husband's fund after the death of the husband and the death or remarriage of the wife, and the capital and income of the wife's fund, after the death of the wife and the death or remarriage of the husband, IN TRUST [*for issue and children of marriage, as in Precedent I., adding after power of appointment to survivor,* "except that if such survivor shall marry again, then the power lastly hereinbefore contained shall not be exerciseable as regards the fund of the other or the income thereof otherwise than by Deed executed before such remarriage" (*l*)]. PROVIDED that no child who or whose issue shall take any part of either the husband's fund or the wife's fund, under any appointment shall, in default of appointment to the contrary, be entitled to any share of the unappointed part without bringing the share appointed to him or her, or to his or her issue, into hotchpot (*m*). PROVIDED that (in substitution for the statutory power of advancement (*n*)) as to the husband's fund after the death of the husband, and the death or remarriage of the wife, or previously thereto, with the respective consent in writing of the husband during his life, and of the wife until her death or remarriage, and as to the wife's fund, after the death of the wife and the death or remarriage of the husband, or previously thereto, with the respective consent in writing of the wife during her life, and of the husband until his death or remarriage, the trustees may raise [*as in Precedent I.*]

Trusts of both funds after determination of prior trusts.

Hotchpot clause as to both funds.

Power of advancement.

6. If there shall be no child of the intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry under that age, then (subject to the trusts hereinbefore declared) the trustees shall hold the husband's fund and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers hereinbefore contained or by law implied after the death or remarriage of the wife, and such default or failure of children, as aforesaid, which shall last happen, IN TRUST for the husband absolutely, and shall hold the wife's fund and the income thereof, or so much thereof respectively as shall not have become vested or been applied

Ultimate trusts of both funds.

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(*l*) See notes to Precedent III.

(*m*) If any fund is settled by reference, e.g., under an agreement for settlement of after-acquired property of the wife, the words "or any property hereby settled by reference to the trusts thereof," had better be inserted after the words "the wife's fund." See Dav. Prec. Con., 3rd. ed., vol. iii., pp. 170, 171, and cases cited in note to hotchpot clause of Precedent II.

(*n*) See T. Act, 1925, s. 32, set out under General Remarks, above.

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under any of the trusts or powers hereinbefore contained or by law implied, after the death or remarriage of the husband and such default or failure of children, as aforesaid, which shall last happen [*in trust for appointees of wife and for wife surviving or next-of-kin, as in Precedent I.*]

Power for husband and wife or for husband surviving to appoint a specified sum to be raised out of husband's fund.

7. The husband and the wife, at any time during their joint lives, and after the death of the wife, if the husband shall survive her, the husband at any time during his life may by Deed, with or without power of revocation and new appointment, appoint that any sum or sums, not exceeding altogether (whether under a joint appointment or a sole appointment, or under both) the sum of £——, shall be raised out of the husband's fund, and shall be paid to themselves or himself, or to any other persons or person, or for any purposes which they or he may think fit, and the trustees shall raise and pay or apply such sum or sums accordingly.

Power for survivor of husband and wife to make a settlement on future marriage.

8. The survivor of the husband and the wife, at any time or times after the death of the other of them, and either in contemplation of or after any future marriage of such survivor, may by Deed, with or without power of revocation and new appointment, or by Will or Codicil, appoint that any part or parts, not exceeding altogether one equal moiety of the fund of the appointor (exclusive [inclusive] in the case of the husband of any sum or sums previously appointed under the power in that behalf lastly hereinbefore contained), shall after the death of the appointor be held by the trustees upon trust to pay all or any part of the income thereof to any person whom the appointor may marry after the death of his or her now intended wife or husband, as the case may be [*remainder of power to make settlement on future marriage, and ancillary clauses, as in Precedent III.*, substituting "appointor" *for* "wife"].

Power to purchase land.

9. The trustees may during the lives of the husband and the wife, upon their request in writing, raise out of either the husband's fund or the wife's fund, and may during the life of the survivor, upon his or her request in writing, raise out of his or her fund any sum or sums not exceeding altogether the sum of £——, and upon the like request may apply the same in the purchase [*remainder of power to invest in purchase of land and ancillary clauses, as in Precedent II. Powers of settling questions and of appointing new trustees and other clauses as required, as in Precedent II.*] IN WITNESS, &c.

FIRST SCHEDULE—*Investments representing residuary estate of husband's father.*

SECOND SCHEDULE—*Investments representing wife's fund.*

## XVII.

PRECEDENT XVII.

POST-NUPTIAL SETTLEMENT OF PERSONAL CHATTELS.

**POST-NUPTIAL SETTLEMENT** *of* **PERSONAL CHATTELS** *for the benefit of the* **SETTLOR**, *his* **WIFE**, *and* **DAUGHTERS** (*o*); **POWER** *of* **REVOCATION.**

THIS SETTLEMENT, made, &c., BETWEEN A. B., of, &c., (herein called "the husband"), of the one part, and C. D., of, &c., and E. F., of &c. (herein called "the trustees," which expression [*&c., as in Precedent I.*]), of the other part, WITNESSETH, that, in consideration of the natural love and affection of the husband for his wife, G. B. (herein called "the wife"), and for his daughters hereinafter named, and for divers other good considerations :—

Assignment of chattels to trustees.

1. The husband Doth hereby assign unto the trustees ALL his pictures, books, plate, plated articles, linen, china, household goods, furniture, chattels, and effects (other than money or securities for money), TO HOLD unto the trustees UPON TRUST to permit the husband during his life, and after his death the wife during her life, to use the same; and after the death of

Habendum upon trusts for husband and wife during their lives.

(*o*) As to the validity of, and consideration for, voluntary settlements, see Dav. Prec. Conv., 3rd. ed., vol. iii., pp. 668 to 699; Dart, V. & P. (1905), pp. 927 *et seq.;* Wms. V. & P. (1922) 376. It is not necessary that such a settlement should contain a power of revocation, or even a general power of disposition on failure of the immediate or principal purposes of the deed, but the settlor's attention should be particularly drawn to the fact that a power of either description might be reserved to him. As regards settlements of leaseholds, *Price* v. *Jenkins* (1877), 5 Ch. D. 619, deciding that such a settlement was so far not voluntary that it could not be defeated by a later assignment for value, was followed in *Harris* v. *Tubb* (1889), 42 Ch. D. 79, but it is not a disposition for value as against creditors (see *Re Ridler* (1882), 22 Ch. D. 74). A voluntary settlement is, under sect. 42 of the Bankruptcy Act, 1914, void against the settlor's trustee in bankruptcy in the event of the settlor becoming bankrupt within two years after the date of the settlement; but the effect of the section is to make the settlement void, not *ab initio*, but only from the time when the trustee's title accrues, so that a *bonâ fide* purchaser for value of the property before that time acquires a good title as against the trustee : see *Re Carter and Kenderdine*, [1897] 1 Ch. 776. Apart from the law of bankruptcy, which remains unaffected by the statutory alterations, the law as to voluntary dispositions is now regulated by the L. P. Act, 1925, sects. 172, 173 (the statutes 13 Eliz. c. 5 and 27 Eliz. c. 4 and the Voluntary Conveyances Act, 1893, being repealed). The short effect of the new sections is that every conveyance with intent to defraud creditors is voidable at the instance of any person prejudiced, but that no voluntary disposition of land is to be deemed to have been made with intent to defraud merely from the fact that a subsequent conveyance for value (if made after June 28, 1893) was made. As to the stamp duty on voluntary settlements, see now the Finance (1909-10) Act, 1910, sect. 74; and as to the liability to estate duty on the death of the settlor, the Finance Act, 1894, sect. 2, sub-sect. 1 (c), and the Finance (1909-10) Act, 1910, sect. 59. The stamp must apparently in every case be adjudicated; see sect. 74, sub-sect. 2, of the last-mentioned Act. See p. 548, note (*p*).

PRECEDENT XVII.

POST-NUPTIAL SETTLEMENT OF PERSONAL CHATTELS.

the survivor of the husband and the wife, UPON TRUST to divide the same equally between their daughters, H. B. and K. B. (*p*). [*Power to appoint new trustees, and other clauses as required, as in Precedent II.*]

Power of revocation.

2. The husband may at any time by Deed or by Will or Codicil either alter or absolutely revoke all or any of the trusts, powers or provisions hereinbefore declared, and by the same or any other Deed or by Will or Codicil declare such new or other trusts, powers or provisions concerning the premises hereinbefore assigned as he shall think fit (*q*). IN WITNESS, &c.

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## XVIII.

PRECEDENT XVIII.

VESTING DEED GIVING EFFECT TO EXISTING STRICT SETTLEMENT.

### VESTING DEED *giving effect to* EXISTING SETTLEMENT *of* FREEHOLDS *and* LEASEHOLDS *in* STRICT SETTLEMENT (*r*).

THIS VESTING DEED made, &c., BETWEEN X., of, &c., and Y., of, &c. (herein called "the trustees," which expression includes the trustees or trustee for the time being hereof), of the one part, and A., of, &c. (herein called "the tenant for life"), of the other part. WHEREAS by a Settlement (herein called "the settlement") dated, &c., [*before* 1926], and made between [*parties*], in consideration of the marriage then intended and since solemnised between the tenant for life and the said [*wife*], the freehold hereditaments described in the First Schedule hereto were limited after the marriage to the use of the tenant for life during his life without impeachment of waste, with remainders to the uses, upon the trusts and subject to the powers and provisions therein mentioned, and the leasehold hereditaments described in the Second Schedule thereto were assigned to the trustees for the residues of the terms for which the same were held under the leases referred to in the same Schedule and subject to the rents, covenants by the lessees, and conditions reserved and contained in the said several leases, to be held by

Recital of settlement.

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(*p*) This deed (not being on marriage) will not come within the exception of "marriage settlements" in sect. 4 of the Bills of Sale Act, 1878, and is liable to registration as a bill of sale. See BILLS OF SALE, General Remarks, p. 61. As to chattels held in undivided shares, see p. 431.

(*q*) Under the former practice covenants for title were not inserted in a voluntary settlement of land, but the covenant implied in sect. 76, sub-sect. 1 (E) of the L. P. Act, 1925, applies in any conveyance by way of settlement; and the settlor could therefore convey "as settlor" if desired.

(*r*) See para. 1 of Second Schedule to S. L. Act, 1925, and compare this Precedent with Form No. 1 in First Schedule to that Act (set out below as Precedent XXIV.). As to the transitional provisions affecting existing settlements, see General Remarks, above, p. 478.

PRECEDENT XVIII.

VESTING DEED GIVING EFFECT TO EXISTING STRICT SETTLEMENT.

the trustees after the marriage upon such trusts, and subject to such powers and provisions as should as nearly correspond with the uses, trusts, powers, and provisions thereinbefore limited concerning the said freehold hereditaments as the rules of law and equity would permit, and more particularly as therein mentioned, and the trustees were appointed trustees of the settlement for the purposes of the Settled Land Acts, 1882 to 1890 [and additional and larger powers to those conferred by those Acts were thereby conferred], and the power of appointing new trustees of the settlement was conferred on the tenant for life during his life [*or as the case may be*]. AND WHEREAS the tenant for life has requested the trustees to execute the requisite Vesting Deed. Now, for giving effect to the requirements of the Settled Land Act, 1925, THIS DEED WITNESSETH as follows :—

Declaration by trustees.

1. The trustees, AS TRUSTEES, Do hereby DECLARE that ALL THOSE the freehold and leasehold hereditaments [described in the First and Second Schedules hereto, being the same hereditaments as were] described in the settlement (*s*), and all other (if any) the hereditaments capable of being vested by this declaration which are now by any means subject to the limitations of the settlement (herein called "the settled land"), are vested in the tenant for life, As to the freeholds in fee simple, And as to the leaseholds for the residues of the terms of years for which the same are respectively held [at the rents and subjects to the covenants by the lessee and conditions in the several leases reserved and contained].

Vesting premises in tenant for life.

Upon trusts of the settlement.

2. The tenant for life shall hold the settled land Upon the trusts and subject to the powers and provisions upon and subject to which under the settlement or otherwise the same ought to be held from time to time.

Trustees for S. L. Act, 1925.

3. The trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

Additional or larger powers.

4. The following additional or larger powers are conferred by the settlement in relation to the settled land, and, by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life (*t*), that is to say [*insert additional powers conferred by settlement*].

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(*s*) Notwithstanding the recommendation of the Legislature (see note to the Statutory Form set out below as Precedent XXIV.) that the settled land should be fully described in the vesting deed, it may often be preferred, if only on the ground of expense, to describe the parcels by reference to the settlement. The fact that the settlement remains part of the title is not, it is thought, a sufficient objection.

(*t*) The words "and by virtue, &c." are rather explanatory than essential, but are inserted in the statutory example. By the S. L. Act, 1925, sect. 109, the settlor may confer additional or larger powers on the tenant for life, or (subject to the provisions of sect. 108) on the trustees, and such powers have

PRECEDENT XVIII.

VESTING DEED GIVING EFFECT TO EXISTING STRICT SETTLEMENT.

Covenant by tenant for life to pay rent, &c. (*u*).

5. The tenant for life Doth hereby covenant with the trustees that the tenant for life will henceforth during the continuance of the several terms granted by the several leases referred to in the Second Schedule hereto pay the several rents thereby reserved, and perform and observe all the covenants by the lessee and conditions therein contained, and keep the trustees indemnified against all actions, proceedings, expenses, claims, demands and liability by reason of the non-payment of any of the said rents, or the breach of any of the said covenants and conditions.

6. The power of appointing any new trustee of the settlement is vested in the tenant for life during his life. IN WITNESS, &c. [*Add Schedules as required.*]

## XIX.

PRECEDENT XIX.

VESTING DEED SETTLING FREEHOLDS AND LEASEHOLDS ON MARRIAGE.

VESTING DEED *on* MARRIAGE SETTLEMENT *of* FREEHOLDS *and* LEASEHOLDS *by reference to a* TRUST INSTRUMENT *of even date* (*x*).

THIS VESTING DEED, made, &c., BETWEEN A., of, &c. [*intended husband*] (herein called "the husband"), of the first part, B., of, &c. [*intended wife*] (herein called "the wife"), of the second part, and C., of, &c., and D., of, &c. (herein called "the trustees," which expression includes the trustees or trustee for the time being hereof), of the third part, WITNESSETH as follows :—

Declaration vesting settled land in husband.

1. In consideration of the marriage intended shortly to be solemnised between the husband and the wife, the husband AS SETTLOR, Doth hereby declare that ALL the freehold and leasehold hereditaments described in the First Schedule hereto (herein called "the settled land") are vested in the husband, As to the freeholds in fee simple, And as to the leaseholds for the residues of the terms of years created by the leases as mentioned in the Second Schedule hereto, and at the rents and subject to the

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the effect of statutory powers. As to what powers could be so conferred under the former law, see *Re Westminster*, [1920] 2 Ch. 445 The new Act has conferred on the tenant for life much wider powers, so that additional powers will now seldom be required.

(*u*) As this Vesting Deed is not a conveyance for valuable consideration the covenant implied by sect. 77, sub-sect. 1 (c) of the L. P. Act, 1925, does not apply.

(*x*) Compare Precedent XXV., below, which is Form No. 2 in First Schedule to S. L. Act, 1925. This form is under sect. 15 given as an example framed in accordance with the provisions of that Act. The above and the next following Precedent together constitute a settlement on marriage of land, together with heirlooms, the heirlooms being settled by the next Precedent on trusts corresponding with those of the settled land.

covenants by the lessees and conditions therein reserved and contained (*y*), Upon such trusts and subject to such powers and provisions concerning the same as are declared by a Trust Instrument of even date with, but intended to be executed immediately after (*z*), these presents, and made between the same parties, and in the same order as these presents, as the same ought to be held from time to time.

PRECEDENT XIX.

VESTING DEED SETTLING FREEHOLDS AND LEASEHOLDS ON MARRIAGE.

2. The trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

On trusts of trust instrument of even date.

Trustees for S. L. Act, 1925.

3. The following additional or larger powers are conferred by the Trust Instrument in relation to the settled land, and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life. [*Insert additional powers, or, if none, omit this clause.*]

Additional powers.

4. The power of appointing any new trustee of the settlement is vested in the husband [and the wife during their joint lives and in the survivor] during his [or her] life. IN WITNESS, &c.

Power to appoint new trustees.

FIRST SCHEDULE—*Description of settled land (freeholds and leaseholds).*

SECOND SCHEDULE—*Leases under which leaseholds are held.*

## XX.

PRECEDENT XX.

TRUST INSTRUMENT ON MARRIAGE, OF FREEHOLDS, LEASEHOLDS, AND HEIRLOOMS, SONS TAKING SUCCESSIVELY IN TAIL MALE.

TRUST INSTRUMENT *on* MARRIAGE SETTLEMENT *of* FREEHOLDS *and* LEASEHOLDS *on trust for* HUSBAND *for life; remainder (subject to* JOINTURE RENTCHARGE *for* WIFE, *and* TERM *for raising* PORTIONS *for* YOUNGER CHILDREN) *for* FIRST *and* OTHER SONS *in* TAIL MALE; *remainder for* HUSBAND. TRUSTS *of* PORTIONS TERM. DECLARATION *as to* TRUSTEESHIP *for purposes of S. L. Act*, 1925. SETTLEMENT *of* HEIRLOOMS *upon corresponding trusts* (*a*).

THIS TRUST INSTRUMENT, made, &c., BETWEEN A., of, &c. [*intended husband*] (herein called "the husband") of the

(*y*) The First Schedule is here assumed to contain a general description of the whole of the settled land, with a reference to the leases in the Second Schedule. The precise mode of description will, of course, vary with the nature and extent of the property. If the title of the settlor to the land is recited it may not be strictly necessary to add in the declaration any words specifying the nature of the estate which is vested in him, as being merely words of limitation.

(*z*) The words "**immediately after**" are here substituted for "**contemporaneously with**" in the statutory example, as the deeds cannot be executed at the same time.

(*a*) Compare Precedent XXVI., below, which is Form No. 3 in the First Schedule to the S. L. Act, 1925.

PRECEDENT XX.

TRUST INSTRUMENT ON MARRIAGE, OF FREEHOLDS, LEASEHOLDS, AND HEIRLOOMS, SONS TAKING SUCCESSIVELY IN TAIL MALE.

first part, B., of, &c. [*intended wife*] (herein called "the wife"), of the second part, and D., of, &c., and E., of, &c. [*trustees*] (herein called "the trustees," which expression includes the trustees or trustee for the time being hereof), of the third part. WHEREAS a marriage has been arranged and is intended shortly to be solemnised between the husband and the wife. AND WHEREAS by a Vesting Deed of even date with, but executed immediately before, these presents, and between the same parties, certain freehold and leasehold hereditaments (herein called "the settled land"), situate, &c., and therein more particularly described, were vested in the husband Upon such trusts and subject to such powers and provisions concerning the same as were declared by a Trust Instrument of even date therewith (meaning these presents), or as the same ought to be held from time to time. NOW THIS DEED WITNESSETH that in consideration of the intended marriage it is hereby agreed and declared as follows :—

Recital of intended marriage; —of vesting deed.

Declaration of trusts.

Until marriage for husband.

After, for husband for life.

Jointure to wife.

Portions term.

Subject to term to sons in tail male.

Remainder to husband.

1. The husband will hold the settled land Upon the trusts and subject to the powers and provisions following, that is to say (1) Until the solemnisation of the intended marriage in trust for himself; (2) After the solemnisation thereof Upon trust for the husband during his life without impeachment of waste; (3) After his death Upon trust that, if the wife shall survive him, she shall receive thereout during the residue of her life a yearly jointure rentcharge of £——; (4) Subject thereto Upon trust for the trustees for a term of 800 years from the date of his death without impeachment of waste Upon the trusts hereinafter declared concerning the same; (5) Subject thereto Upon trust for the first and other sons of the marriage successively, according to seniority in tail male; (6) With remainder In trust for the husband (*b*).

(*b*) The following is a form of power enabling the settlor to charge a gross sum :—

Power to charge a gross sum.

"PROVIDED ALWAYS, that the husband may by Deed or Will or Codicil expressly referring to this power or the property subject thereto (but subject to the said yearly rentcharge hereinbefore limited, and the powers and remedies for recovering payment thereof), charge all or any part of the settled land with the payment to himself or any other person or persons of any sum or sums of money not exceeding in the whole the sum of £——, with interest for the same respectively after any rate not exceeding —— per cent. per annum from the time or times of such sum or sums respectively being so charged, or from any later time or times. AND ALSO appoint all or any part of the settled land charged as aforesaid to the same or any other person

Trusts of portions term for younger children (*c*).

2. The trustees shall hold the said term of 800 years (1) Upon trust that if there shall be any child or children of the marriage (other than the first or only son, and any other son or sons who before his or their respectively attaining the age of twenty-one years shall become entitled, whether in possession or remainder, under or by virtue of these presents, to the settled land for the first estate in tail male), who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, the trustees shall after the death of the husband, or in his lifetime with his consent in writing, by mortgage of the settled land or any part thereof for all or any part of the same term or by the sale of timber, or minerals, or by and out of the rents and profits thereof, or by all or any of the means aforesaid, or by any other reasonable means, raise for the portion or portions of such child or children as aforesaid (other than a first or only, and other son or sons, so becoming entitled as aforesaid), such sum of money as is hereinafter mentioned (that is to say), IF there shall be but one such child (other than as aforesaid), the sum of £—— to be paid to such child, being a son, at his age of twenty-one years, or being a daughter at her age of twenty-one years or day of marriage, which shall first happen, if the same shall happen after the death of the husband, and if the same shall happen during his life, then immediately after his death, or in his lifetime if he shall so request in writing: AND if there shall be but two such children (other than as aforesaid), the sum of £——; AND if there shall be but three such children (other than as aforesaid), the sum of £——; AND if there shall be four or more such children (other than as aforesaid), the sum of £——. The said sum of £——, £——, or £——, as the event may happen, to be paid to all or such one or more exclusively of the other or others of the children for whose portions the same shall be raised as aforesaid, at such age or time or respective ages or times (not previous as to a son to his attaining the age of twenty-one years, or as to a daughter to her attaining that age or marrying, which shall first happen), if more than one in such shares, with such future executory or other trusts

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or persons for any term or terms of years, with or without impeachment of waste, upon usual trusts for raising by mortgage or otherwise the principal sum or sums of money and interest so charged as aforesaid, and the costs and expenses (if any) to be incurred in or about the execution of the trusts thereof."

(*c*) A "younger" son in whom a share in the portions fund has become vested may be entitled to such share, even though he afterwards becomes an "eldest" son: *Re Wise*, [1913] 1 Ch. 41. See further as to "younger children" Vaizey on Settlements (1887), 1103, &c.

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TRUST INSTRUMENT ON MARRIAGE, OF FREEHOLDS, LEASEHOLDS, AND HEIRLOOMS, SONS TAKING SUCCESSIVELY IN TAIL MALE.

for the benefit of the said children or some or one of them, with such provisions for the respective advancement (in the lifetime of the husband or after his decease) and maintenance or education of the child or children for the time being entitled in expectancy, and upon such conditions, with such restrictions, and in such manner as the husband shall by Deed, or Will or Codicil appoint: AND in default of and subject to such appointment, to be divided between the children for whose portions the same shall be raised as aforesaid in equal shares, to be paid to them respectively, being a son or sons at his or their age or respective ages of twenty-one years, or being a daughter or daughters at her or their age or respective ages of twenty-one years or day or respective days of marriage, which shall first happen, if the same respectively shall happen after the death of the husband, but if the same respectively shall happen during his life, then immediately after his death, or in his lifetime if he shall so request in writing; (2) PROVIDED that no child taking any part of the said sum of £——, £——, or £—— as the case may be, under any appointment in pursuance of the aforesaid power for that purpose, shall, in default of appointment to the contrary, be entitled to any share of the unappointed part of the same sum, without bringing his or her appointed share into hotchpot, and accounting for the same accordingly; (3) PROVIDED that (in substitution for the statutory power of advancement (*d*)) the trustees may after the death of the husband, or in his lifetime with his consent in writing, by the ways and means aforesaid, or any of them, raise any sum or sums of money, not exceeding altogether one-half of the then expectant or presumptive portion under the trusts aforesaid of any son of the marriage for the time being entitled in expectancy to a portion under the same trusts, and pay or apply the money so to be raised for the advancement or benefit of such son, in such manner as the husband during his life, and after his death as the trustees shall think fit; (4) PROVIDED that every sum of money raised for the advancement or benefit of any such son as aforesaid, shall be taken to be in part satisfaction of the amount raiseable for portions under the trusts aforesaid, either in the event of such son becoming entitled to a portion under the same trusts, or in the case provided for in the proviso next hereinafter contained, but not otherwise;

Hotchpot clause.

Power of advancement.

Advances when to be taken into account as portions.

(*d*) The statutory power of advancement should, it is thought, be expressly excluded, as the consent of the wife, although entitled to a jointure, is not here required, but such consent might be thought necessary under the statute (see T. Act, 1925, sect. 32, and General Remarks, above), but the implied statutory powers of maintenance may be relied on (T. Act, 1925, sect. 31).

(5) PROVIDED that no more than the sum of £—— shall be raiseable for portions under the trusts hereinbefore declared, and for the advancement or benefit of sons under the power for that purpose hereinbefore contained, so that if, by reason of any sum or sums having been raised for the advancement or benefit of any son or sons, more than the sum of £—— would, but for this present proviso, have been raiseable for portions and for the advancement or benefit of such son or sons, so much of the sum raiseable for such portions as shall form the excess shall absolutely sink into the estate and not be raised; (6) PROVIDED that the husband shall, as between himself and the persons entitled in remainder (but without prejudice to the rights of the mortgagee or mortgagees) be bound to keep down the interest accruing during his life upon any money raised as aforesaid in his lifetime; (7) PROVIDED that, subject to the trusts hereinbefore declared, and subject to the right of the trustees, by any of the ways and means aforesaid, to raise and reimburse themselves all costs and expenses incurred in relation to the trusts aforesaid, the rents and profits of the said premises comprised in the said term of eight hundred years, or so much of the said rents and profits as shall from time to time remain after answering the trusts aforesaid, shall be received by the person or persons for the time being entitled to the same premises in reversion expectant upon the same term.

Tenant for life to keep down interest on money raised in his lifetime.

Surplus rents to be taken by reversioner.

3. The trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

Trustees for purposes of S. L. Act, 1925.

4. The following additional or larger powers, &c. [*as in the preceding Precedent*].

Additional powers.

5. The husband, AS SETTLOR, Doth hereby assign unto the trustees ALL THOSE chattels (herein called "the heirlooms") described in the Schedule hereto, TO HOLD unto the trustees absolutely upon the trusts and subject to the powers and provisions following, that is to say:—

Assignment to trustees of heirlooms on corresponding trusts, with further provisions.

(1) The trustees shall hold the heirlooms in trust for the husband until the solemnisation of the intended marriage, and thereafter upon trust to allow the same to devolve and be enjoyed with the settled land as heirlooms, upon such trusts and subject to such powers and provisions as correspond with the trusts, powers, and provisions declared concerning the settled land as nearly as may be, having regard to the different nature thereof (*e*).

(*e*) See L. P. Act, 1925, sect. 130, sub-sect. 3, set out under DISENTAILING DEEDS, General Remarks. Note that heirlooms may not be sold, nor may other chattels be purchased as heirlooms, except by order of the Court: S. L. Act, 1925, sect. 67. Compare form in will, p. 602.

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TRUST INSTRUMENT ON MARRIAGE, OF FREEHOLDS, LEASEHOLDS, AND HEIRLOOMS, SONS TAKING SUCCESSIVELY IN TAIL MALE.

(2) The person of full age for the time being beneficially entitled under the settlement to possession shall be entitled to the custody of the heirlooms and may direct in what place they shall be kept.

(3) The heirlooms shall be properly cared for and preserved, and also kept insured against loss or damage by fire or otherwise by or at the expense of the tenant for life; PROVIDED that the trustees (except when themselves entitled to the custody thereof) shall not be responsible to see to their preservation or insurance, but may nevertheless intervene if in their view the heirlooms or any of them are not being properly cared for, preserved, or insured, or are otherwise in jeopardy.

Power to appoint new trustees.

6. The power of appointing any new trustee is vested in the husband [and the wife during their joint lives, and in the survivor] during his [or her] life. IN WITNESS, &c.

SCHEDULE—*List of heirlooms.*

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## XXI.

PRECEDENT XXI.

ON MARRIAGE. OF FREEHOLDS THE CHILDREN TAKING AS TENANTS IN COMMON IN TAIL.

TRUST INSTRUMENT *on* MARRIAGE SETTLEMENT *of* FREEHOLDS *upon* HUSBAND *and* WIFE *successively for life, with* REMAINDER *to* ISSUE *as Husband and Wife or Survivor Appoint, and in Default to* CHILDREN *in equal shares in* TAIL, *with* CROSS REMAINDERS *in* TAIL.

THIS TRUST INSTRUMENT, made, &c., BETWEEN A., of, &c. [*intended husband*] (herein called "the husband"), of the first part, B., of, &c. [*intended wife*] (herein called "the wife"), of the second part, and C., of, &c., and D., of, &c. [*trustees*] (herein called "the trustees," which expression includes the trustees or trustee for the time being hereof), of the third part.

Recital of intended marriage;

—of vesting deed.

WHEREAS a marriage has been arranged and is intended shortly to be solemnised between the husband and the wife. AND WHEREAS by a Vesting Deed of even date with but executed immediately before, and made between the same parties as are parties to these presents, certain freehold hereditaments situate at ——, and therein described (herein called "the settled land") were vested in the husband in fee simple, upon the trusts declared by a Trust Instrument of even date therewith (meaning these presents). NOW THIS DEED WITNESSETH, that, in consideration of the intended marriage, the husband Doth hereby agree that he will hold the settled land upon the trusts following :—

Declaration of trusts.

Until marriage for settlor in fee.

1. Until the solemnisation of the marriage In trust for himself in fee simple.

PRECEDENT XXI.

ON MARRIAGE, OF FREEHOLDS, THE CHILDREN TAKING AS TENANTS IN COMMON IN TAIL.

2. After the solemnisation thereof, Upon trust for himself during his life without impeachment of waste, AND AFTER his death Upon trust for the wife during her life without impeachment of waste [but during the intended coverture so that her reversionary life interest shall be without power of anticipation]; AND AFTER the death of the wife, In trust for all or such one or more of the issue of the intended marriage, for such estates or interests, and in such manner as the husband and the wife shall by Deed jointly appoint; AND IN DEFAULT of, and subject to any such appointment, as the survivor shall by Deed or Will or Codicil appoint; AND IN DEFAULT of, and subject to any such appointment, (1) if there is only one child of the said marriage, IN TRUST for such child in tail; (2) if there is more than one such child, then IN TRUST for the trustees in fee simple, upon the statutory trusts as defined by the Settled Land Act, 1925, so that the net proceeds of sale, and the net rents and profits of the settled land until sale, shall be held Upon such trusts and subject to such powers and provisions as may be requisite for giving to such children the same or similar rights and interests as if they had been tenants in common in equal shares in tail with cross remainders in tail (*f*), WITH REMAINDER in trust for the husband in fee simple.

After marriage for settlor for life.

Then for wife for life.

Issue as settlor and wife or survivor appoint.

In default of appointment, children in tail and ultimate remainder.

3. The trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

Trustees of settlement.

4. The following additional or larger powers are hereby conferred in relation to the settled land, and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life. [*Insert additional powers, if any, as in Vesting Deed, or, if none, omit this clause.*]

Additional or larger powers.

5. The power of appointing any new trustee of the settlement is vested in the husband [and the wife during their joint lives, and in the survivor] during his [or her] life. IN WITNESS, &c.

Power to appoint new trustees.

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## XXII.

PRECEDENT XXII.

VESTING DEED ON RESETTLEMENT OF FREEHOLDS.

VESTING DEED *on* RESETTLEMENT *of* FREEHOLDS *by Father and Son, the Son having barred his Entailed Interest.*

THIS VESTING DEED, made, &c., BETWEEN A., of, &c. (herein called "the father"), of the first part, B., of, &c. (herein called "the son"), of the second part, and X., of, &c., and

(*f*) See S. L. Act, 1925, sect. 36.

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VESTING DEED ON RESETTLEMENT OF FREEHOLDS.

Y., of, &c. (herein called "the trustees," which expression includes the trustees or trustee for the time being hereof), of the third part. WHEREAS these presents are supplemental to (1) a Settlement (herein called "the original settlement"), dated, &c. [*before* 1926], and made between [*parties*], whereby the hereditaments therein described were settled as therein mentioned; (2) a Vesting Deed (herein called "the principal vesting deed"), dated, &c. [*after* 1925], and made between [*parties*, i.e., *trustees and father*], whereby the hereditaments therein comprised, being the hereditaments settled by the original settlement, were vested as therein mentioned; (3) a Disentailing Deed (herein called "the disentailing deed"), dated, &c., and made between [*parties*, i.e., *father, son, and grantee*], whereby the entailed interest in remainder of the son in the settled land was, with the consent of the father, converted into an absolute interest in equity, and the trusts, powers, and provisions of the original settlement became liable to be varied as therein mentioned. AND WHEREAS the father and the son have since agreed to vary the trusts, powers, and provisions of the original settlement by way of resettlement, but so as to restore and confirm the former estate or interest of the father thereunder, and for that purpose a Trust Instrument (herein called "the trust instrument") (*h*) has been prepared and is intended to be executed on the same day as but immediately after these presents and between the same parties as are parties hereto. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises :—

Recital of (1) original settlement; (2) vesting deed; and (3) disentailing deed;

—of agreement for resettlement.

Declaration vesting land on new trusts.

1. The father, AS SETTLOR, Doth hereby declare that ALL THOSE hereditaments comprised in the principal vesting deed, And all other (if any) the hereditaments capable of being vested by this declaration (herein called "the settled land") are vested in the father in fee simple, subject to such trusts, powers and provisions concerning the settled land as are now subsisting by virtue of the original settlement, except so far as varied by the disentailing deed, Upon the trusts and subject to the powers and provisions declared by the trust instrument, or upon such other trusts or subject to such other powers and provisions as the same ought to be held from time to time.

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(*h*) The original settlement which was subsisting on January 1, 1926, is, for the purposes of the S. L. Act, 1925, also a trust instrument (Second Schedule, para. 1, sect. 1, sub-sect. 1), so that the new settlement is a second trust instrument, but, for the purposes of this deed, it may be referred to merely as "the trust instrument." The disentailing deed (as recited in the next Precedent) is assumed to have limited the land to the joint appointment of the father and son, and subject thereto upon the trusts of the original settlement.

2. The trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925. Trustees for S. L. Act, 1925.

3. The following additional or larger powers [in addition to those conferred by the original settlement] are conferred by the trust instrument in relation to the settled land, and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life. [*Insert additional powers, if any.*] Additional powers.

4. The power of appointing any new trustee of the settlement is vested in the father and the son during their joint lives, and in the survivor during his life. IN WITNESS, &c. Power to appoint new trustees.

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## XXIII.



TRUST INSTRUMENT *by way of* RESETTLEMENT *by* FATHER *and* SON *of* FREEHOLDS, *exercising their joint power of appointment.* LIMITATION *of* RENTCHARGE to SON. LIMITATIONS *to* FATHER *for* LIFE, *with remainder to* SON *for* LIFE, *with remainder to the* TRUSTEES *for a* PORTIONS TERM, *with remainder to the* FIRST *and* OTHER SONS *of the* SON *successively in* TAIL MALE *and other remainders.* TRUSTS *of the* PORTIONS TERM *for* YOUNGER CHILDREN *of* SON. POWER *for* SON *to* JOINTURE *a* FUTURE WIFE. POWER *for* SUBSEQUENT TENANTS *for* LIFE *to* JOINTURE *and charge* PORTIONS.

THIS TRUST INSTRUMENT, made, &c., BETWEEN A., of, &c. (herein called "the father"), of the first part, B., of, &c., his eldest son (herein called "the son"), of the second part, and X., of, &c., and Y., of, &c. (herein called "the trustees," which expression includes the trustees or trustee for the time being hereof), of the third part. WHEREAS, by virtue (1) of a Settlement (herein called "the original settlement") dated, &c. [*before* 1926], and made between [*parties*]; (2) of a Vesting Deed (herein called "the principal vesting deed") dated, &c., and made between [*parties*]; and (3) of a Disentailing Deed (herein called "the disentailing deed") dated, &c., and made between [*parties*], the hereditaments comprised in the principal vesting deed were vested in the father in fee simple, and stood settled, subject to the trusts and interests limited by the original settlement which preceded the limitation to the first son of the father (other than the life interest of the father), and to the powers annexed to such preceding trusts or interests, or exercisable during the continuance thereof, Upon such trusts and Recital of possession of settled land;

PRECEDENT XXIII.

RESETTLEMENT BY FATHER AND SON OF FREEHOLDS.

subject to such powers and provisions as the father and the son should by deed jointly appoint; AND IN DEFAULT of and until and subject to such appointment, Upon the trusts and subject to the powers and provisions which, by virtue of the original settlement, were subsisting or capable of taking effect therein immediately before the execution of the disentailing deed, so as to restore and confirm the same trusts, powers and provisions; AND WHEREAS, as part of an arrangement between them and for continuing in the family the possession of the said hereditaments, the father and the son have agreed to make such resettlement as is hereinafter contained. AND WHEREAS by a Vesting Deed (herein called "the second vesting deed") of the same date as, but executed immediately before, these presents, and made between the same parties as are parties hereto, the hereditaments comprised in the principal vesting deed were vested in the father in fee simple, Subject to such trusts, powers and provisions as were then subsisting by virtue of the original settlement, except so far as varied by the disentailing deed, Upon the trusts and subject to the powers and provisions declared by a Trust Instrument of even date therewith and therein referred to (meaning these presents). NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises :—

—of agreement to resettle.

Appointment.

1. The father and the son, AS SETTLORS, in exercise of the power vested in them by the disentailing deed, and of all other powers, Do hereby appoint that ALL THOSE hereditaments comprised in the principal vesting deed and all other the hereditaments (if any) over which the father and the son have a joint power of appointment (herein called "the settled land"), shall from and immediately after the execution of these presents (but subject to the trusts and interests limited by the original settlement which preceded the limitation to the first son of the father (other than the life interest of the father), and to the powers annexed to such preceding trusts and interests or exercisable during the continuance thereof respectively), remain and be Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same.

Rentcharge to son.

2. The settled land shall be held (1) Upon trust that the son, during the joint lives of himself and the father, may receive (*i*) the yearly rentcharge of £——, to be charged upon and issuing out of the settled land, and to commence from the date hereof, but to be payable quarterly without any deduction

(*i*) Sometimes a rentcharge is also limited for the benefit of the son's eldest son, in case the former dies in his father's lifetime.

on the usual quarter days; (2) Upon trust that, if the son shall die in the lifetime of his present wife C., she the said C. may, from and after the death of the son, receive during her life the yearly rentcharge or rentcharges following (that is to say), IF and so long as the father shall be living, the yearly rentcharge of £——, and after the death of the father, the yearly rentcharge of £——, to be respectively charged upon and issuing out of the settled land, and to be payable quarterly without any deduction on the usual quarter days, the first payment in respect of the said rentcharge of £—— to be made on such of those days as shall happen next after the death of the son if the father shall then be living, and the first payment in respect of the said rentcharge of £—— to be made on such of those days as shall happen next after the death of the survivor of the father and the son if the said C. shall then be living; AND, subject and charged as aforesaid, (3) Upon trust for the father during his life without impeachment of waste; AND AFTER the death of the father, (4) Upon trust for the son during his life without impeachment of waste, and as to the father's life interest in restoration and by way of continuation and confirmation of the former life interest of the father, limited to him by the original settlement (*k*); AND AFTER the death of the son, (5) Upon trust for the trustees for the term of 800 years from the death of the survivor of the father and the son, without impeachment of waste, upon the trusts and subject to the powers and provisions hereinafter declared and contained concerning the same; AND subject thereto and to the trusts thereof, (6) Upon trust for the first and every other son of the son successively according to their respective seniorities in tail male, with remainder Upon trust for [*E., the second son of A., for life, remainder to the first and other sons of E. successively in tail male, remainder to F., the third son of A., for life, remainder to the first and other sons of F. successively in tail male*], with remainder Upon trust for the son in fee simple.

Rentcharges to son's wife by way of jointure.

To the father for life.

To the son for life.

Portions term.

Remainders in strict settlement in tail male.

3. The trustees shall hold the said term of 800 years (1) Upon trust that the trustees shall, after the death of the father and the son, or in their or his lifetime, at their or his request in writing (*l*),

Trusts of portions term.

(*k*) The object of these words is to show the intention of keeping alive the powers under the original settlement incidental to the old life interest. The statutory powers remain exercisable, notwithstanding the resettlement: see *Re Constable*, [1919] 1 Ch. 178; *Re Cope and Wadland*, [1919] 2 Ch. 376; *Re Curwen and Frames*, [1924] 1 Ch. 581; and see now S. L. Act, 1925, sect. 22.

(*l*) It is sometimes arranged that the portions shall become raiseable upon the death of the son; but, if that be the scheme, the position of the term in order of limitation must be altered as well as the trusts.

PRECEDENT XXIII.

RESETTLEMENT BY FATHER AND SON OF FREEHOLDS.

by mortgage of the same premises or any of them for all or any part of the same term, or by the sale of timber or minerals, or by and out of the rents and profits of the same premises or any of them, or by all or any of the means aforesaid, or by any other reasonable means, raise for the portion or portions of the child or children of the son (whether by the said C. or any other wife) (*m*) who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, other than a first or only son and any other son or sons who, before his or their respectively attaining the age of twenty-one years, shall become entitled, whether in possession or remainder, to the said premises for the first estate in tail male, such sum of money as is hereinafter mentioned (that is to say): IF there shall be but one such child (other than as aforesaid), the sum of £——, to be paid to such child, being a son, at his age of twenty-one years, or being a daughter at her age of twenty-one years or marriage, which shall first happen, if the same shall happen after the death of the father and the son, and if the same shall happen in the lifetime of them or of the survivor, then immediately after the death of the survivor, or in the lifetime of them, or of the survivor, if they or he shall so request in writing; AND if there shall be but two such children (other than as aforesaid), the sum of £——; AND if there shall be but three such children (other than as aforesaid), the sum of £——; AND if there shall be four or more such children (other than as aforesaid), the sum of £——, the said sum of £——, £——, or £——, as the event may happen, to be paid or divided to or between the children for whose portions the same shall be raised, or any one or more exclusively of the other or others of them, in such shares if more than one, and with such future executory or other trusts, for the benefit of all or any one or more of such children, upon such conditions, with such restrictions, and in such manner as the son shall by Deed or Will or Codicil appoint; AND IN DEFAULT of and subject to such appointment, to be paid or divided to or between the children for whose portions the same shall be raised in equal shares, to be paid to them respectively being a son or sons at his or their age or respective ages of twenty-one years, or being a daughter or daughters at her or their age or respective ages of twenty-one years or day or respective days of marriage, which shall first happen, if the same shall happen after the death of the father and the son, but if the same respectively shall happen in the lifetime of them or the survivor of them, then

(*m*) *I.e.*, unless he takes an express power to charge portions for children of a future marriage.

immediately after the death of the survivor of them, or in the lifetime of them or the survivor of them, if they or he shall so request in writing; (2) [*Hotchpot clause, as in Precedent XX.*] (3) PROVIDED that the trustees (in substitution for the statutory power of advancement) may, after the death of the son, or in his lifetime with his consent in writing (but in either case with the consent in writing of the father during his lifetime), raise by the means aforesaid, or any of them, any sum or sums [*remainder of advancement clause, as in Precedent XX., saying*, "any son of the son," *and substituting* "the son" *for* "the husband." *Provisoes as to sums raised for advancement being taken or not taken into account as portions, and as to surplus rents, as in Precedent XX.*].

Power of advancement.

4. If the son shall [survive the said C. and (*n*)] marry again, the son may, either before or after his marriage, by Deed or Will or Codicil appoint to any woman whom he may so marry, for her life or any less period, any yearly rentcharge or rentcharges by way of jointure (*o*), not exceeding in the whole during the joint lives of the father and such woman the sum of £——, and not exceeding after the death of the father the sum of £——, to be charged upon and issuing out of the settled land [without any deduction]; and to be paid at such times and in such manner as to the son shall seem meet. AND the power of jointuring hereinbefore contained may be exercised as often as the son shall marry.

Power to the son to jointure a future wife.

5. It shall be lawful for each person hereby made tenant for life of the premises other than the father and the son, either before or after he shall become entitled to the possession or the receipt of the rents and profits thereof (but subject to the interests preceding the interest of the person for the time being exercising this power, and to the powers annexed to such preceding interests, and to the trusts or interests limited in exercise of such powers), by Deed or Will or Codicil [*continue the power of jointuring, with the ancillary provisoes as to the exercise of the powers from time to time, and as to the jointure becoming a lien, and limiting the total amount for which the estates are to be liable at any one time, and saying*, "rentcharges exceeding in the whole, together with the annual sum for the time being payable to the said C., or any other wife of the son, the annual sum of £——." *Compare Precedent XIII. in* WILLS.].

Power to subsequent tenants for life to jointure.

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(*n*) See *Marlborough* v. *Marlborough*, [1901] 1 Ch. 165; *Re Pilkington*, [1923] W. N. 188, where the marriage was dissolved by divorce.

(*o*) See *Re De Hoghton* (No. 2), [1896] 2 Ch. 385, where the omission of these words raised the question whether an annuity to the wife was authorised during the husband's lifetime.

PRECEDENT XXIII. — RESETTLEMENT BY FATHER AND SON OF FREEHOLDS.

6. It shall be lawful for each person hereby made tenant for life of the premises other than the father and the son, either before [*continue the power of charging portions for children other than a son becoming entitled to the estates in tail male, with the ancillary provisoes, as in Precedent XIII. in* WILLS, *and restricting the total amount to* "such a sum as, together with any sum raiseable for portions under the trusts of the said term of 800 years, will make up the aggregate sum of £——."]

Power to subsequent tenants for life to charge portions.

7. The trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

Declaration as to trusteeship.

8. The following additional or larger powers [in addition to those conferred by the original settlement] are hereby conferred in relation to the settled land and by virtue of the Settled Land Act, 1925, shall operate and be exercisable as if conferred by that Act on a tenant for life, that is to say :— [*Insert additional powers, if any.*].

Additional powers.

Power to appoint new trustees.

9. The power to appoint any new trustee of the settlement is vested in the father and the son during their joint lives and in the survivor during his life. IN WITNESS, &c. (*p*).

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## XXIV.

PRECEDENT XXIV. — STATUTORY EXAMPLE OF VESTING DEED WHERE SETTLEMENT BEFORE 1926.

*Statutory Example of* VESTING DEED *for giving effect to a* SETTLEMENT SUBSISTING *at the* COMMENCEMENT *of the* S. L. ACT, 1925 (*q*).

THIS VESTING DEED is made [&c.] between X. of [&c.] and Y. of [&c.] (hereinafter called the trustees) of the one part and T. L. of [&c.] of the other part.

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(*p*) As to the stamp, apparently this must now be adjudicated, unless the settlement is not a voluntary disposition within the meaning of sect. 74 of the Finance (1909-10) Act, 1910. See *Baker* v. *I. R. Commrs.*, [1924] A. C. 270.

(*q*) This is Form No. 1 in the First Schedule to the S. L. Act, 1925 (see sect. 15). A fuller form based upon this statutory example will be found in Precedent I. The following note is added at the end of the statutory form and is as follows :—

[NOTE.—Add the schedules. In the first part of the First Schedule give particulars of the manors, advowsons and other incorporeal hereditaments. In the second part give particulars of the freehold land referring, if practicable, to annexed plans, so that the vesting deed may ultimately become a convenient root of title. Unless this is done the deeds referred to will for purposes of the parcels remain part of the title. In the Second Schedule give particulars of the dates of and parties to the leases of the leasehold hereditaments, and short particulars of the properties demised, the terms and the rents. If there are any mortgages having priority to the settlement these should be mentioned in another schedule and referred to in the recitals.] But see p. 533, note (*s*).

PRECEDENT XXIV. STATUTORY EXAMPLE OF VESTING DEED WHERE SETTLEMENT BEFORE 1926.

[*Recite the Settlement under which T. L. is a tenant for life of full age in possession of the freeholds and leaseholds respectively described in the First and Second Schedules and has power to appoint new trustees, and the trustees are trustees for the purposes of the Settled Land Act, 1925, also the request by T. L. that the trustees should execute the requisite vesting deed.*]

Now for giving effect to the requirements of the Settled Land Act, 1925, THIS DEED WITNESSETH as follows :—

1. The trustees as Trustees hereby declare that—

All and singular the hereditaments and premises respectively mentioned in the First and Second Schedules hereto and all other (if any) the premises capable of being vested by this declaration which are now by any means subject to the limitations of the recited settlement are vested in the said T. L. as to the freehold hereditaments mentioned in the First Schedule hereto in fee simple, and as to the leasehold hereditaments mentioned in the Second Schedule hereto, for all the residue of the terms of years for which the same are respectively held.

2. The said T. L. shall stand possessed of the premises upon the trusts and subject to the powers and provisions upon and subject to which under the recited settlement or otherwise the same ought to be held from time to time.

3. The trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

4. The following additional or larger powers are conferred by the said settlement in relation to the settled land, and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life. [*Here insert the additional powers.*]

5. [*Add the usual covenant by T. L. with the trustees to pay the rent in respect of leasehold hereditaments, observe the lessee's covenants, and keep the trustees indemnified.*]

6. The power to appoint a new trustee or new trustees of the settlement is vested in the said T. L. during his life.

IN WITNESS. [*Add Schedule as required.*]

## XXV.

*Statutory Example of* VESTING DEED *on the* SETTLEMENT *of* LAND (*r*).

PRECEDENT XXV. STATUTORY EXAMPLE OF VESTING DEED WHERE SETTLEMENT AFTER 1925.

THIS VESTING DEED made [&c.] between John H. of [&c.] of the first part, Jane W. of [&c.] of the second part,

(*r*) This is Form No. 2 in the First Schedule to the S. L. Act, 1925 (see sect. 15). A fuller form based upon this statutory example will be found in Precedent II.

PRECEDENT XXV.

STATUTORY EXAMPLE OF VESTING DEED WHERE SETTLEMENT AFTER 1925.

and X. of [&c.], Y. of [&c.], and Z. of [&c.] (hereinafter called the trustees) of the third part.

WITNESSETH and it is hereby declared as follows :—

1. In consideration of the intended marriage between John H. and Jane W. the said John H. as Settlor hereby declares that

ALL THAT (*setting out the parcels by reference to a schedule or otherwise*) are vested in John H. in fee simple (*or in the case of leaseholds refer to the terms*).

Upon the trusts declared concerning the same by a Trust Instrument bearing even date with but intended to be executed contemporaneously with these presents and made between the same parties and in the same order as these presents or upon such other trusts as the same ought to be held from time to time.

2. The trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

3. The following additional or larger powers are conferred by the said trust instrument in relation to the settled land, and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life. [*Here insert the additional powers.*]

4. The power of appointing a new trustee or new trustees of the settlement is vested in the said [*John H.*] during his life.

IN WITNESS [&c.].

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## XXVI.

PRECEDENT XXVI.

STATUTORY EXAMPLE OF TRUST INSTRUMENT AFTER 1925.

*Statutory Example of* TRUST INSTRUMENT *on the* SETTLEMENT *of* LAND (*s*).

THIS TRUST INSTRUMENT is made [&c.] between John H. of [&c.] (hereinafter called the Settlor) of the first part, Jane W. of [&c.] of the second part, and X. of [&c.], Y. of [&c.], and Z. of [&c.] (hereinafter called the trustees) of the third part.

WHEREAS by a deed (hereinafter called the Vesting Deed) bearing even date with but executed contemporaneously with these presents, and made between the same parties and in the same order as these presents, certain hereditaments situated at —— in the county of —— were vested in the Settlor Upon the trusts declared concerning the same by a trust instrument of even date therein referred to (meaning these presents).

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(*s*) This is Form No. 3 in the First Schedule to the S. L. Act, 1925 (see sect. 15). Fuller forms will be found in Precedents XX. and XXI.

PRECEDENT XXVI.

STATUTORY EXAMPLE OF TRUST INSTRUMENT AFTER 1925.

Now in consideration of the intended marriage between the Settlor and Jane W., THIS DEED WITNESSETH as follows :—

1. The Settlor hereby agrees that he will hold the hereditaments and property comprised in the Vesting Deed In trust for himself until the solemnisation of the said marriage and thereafter Upon the trusts following, that is to say :—

2. Upon trust for the Settlor during his life without impeachment of waste with remainder Upon trust if Jane W. survives him that she shall receive out of the premises during the residue of her life a yearly jointure rentcharge of [&c.] and subject thereto Upon trust for the trustees for a term of 800 years from the date of the death of the Settlor without impeachment of waste Upon the trusts hereinafter declared concerning the same. And subject to the said term and the trusts thereof Upon trust for the first and other sons of the said intended marriage successively according to seniority in tail male with remainder [&c.] *with an ultimate remainder in trust for the Settlor in fee simple.*

[*Here add the requisite trusts of the portions term, and any other proper provisions including the appointment of the trustees to be trustees of the settlement for the purposes of the Settled Land Act*, 1925, *extension of Settled Land Act powers, and a power for the tenant for life for the time being of full age to appoint new trustees of the settlement.*]

IN WITNESS, [&c.] (*ss*).

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## XXVII.

*Statutory Example of* SUBSIDIARY VESTING DEED *on* SALE *when the* LAND *is* PURCHASED *with* CAPITAL MONEY (*t*).

PRECEDENT XXVII.

STATUTORY EXAMPLE OF SUBSIDIARY VESTING DEED.

THIS SUBSIDIARY VESTING DEED is made [&c.] between Henry V. of [&c.] (hereinafter called the Vendor) of the first part, X. of [&c.], Y. of [&c.], and Z. of [&c.] (hereinafter called the trustees) of the second part, and John H. [&c.] (hereinafter called the Purchaser) of the third part.

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(*ss*) The following note is added at the end of the form :—

NOTE.—The vesting deed and the trust instrument can be executed as escrows till the marriage.

(*t*) This is Form No. 4 in the First Schedule to the S. L. Act, 1925 (see sect. 15). The following note is added at the end of the form :—

NOTE.—On a purchase of a term of years absolute out of capital money, the term must be conveyed to the tenant for life, if any, of full age, instead of to the trustees of the settlement. If there is a minority the land will be conveyed to the personal representatives or to the Settled Land Act trustees.

PRECEDENT XXVII.

STATUTORY EXAMPLE OF SUBSIDIARY VESTING DEED.

WHEREAS the Vendor is entitled for an estate in fee simple in possession free from incumbrances to the hereditaments hereinafter conveyed and has agreed to sell the same to the Purchaser at the price of —— pounds.

AND WHEREAS by a principal vesting deed (hereinafter called the principal deed) dated [&c.], and made [&c.] [*Form No.* 2], certain hereditaments were vested in the Purchaser Upon the trusts of a trust instrument of even date therewith, and by [endorsements on] the principal deed the trustees were stated to be the trustees of the settlement for the purposes of the Settled Land Act, 1925.

NOW THIS DEED WITNESSETH as follows :—

1. In consideration of the sum of —— pounds now paid to the Vendor by the trustees by the direction of the Purchaser (the receipt of which sum the Vendor hereby acknowledges) the Vendor as Beneficial Owner hereby conveys unto the Purchaser ALL THOSE, [&c.].

To hold unto the Purchaser [in fee simple] upon and subject to the same trusts and powers as are declared by the principal deed by reference as aforesaid with respect to the hereditaments therein comprised.

2 and 3. [*Same as* 2 *and* 4 *in Form No.* 2.]

IN WITNESS, [&c.].

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## XXVIII.

PRECEDENT XXVIII.

DISCHARGE BY TRUSTEES OF SETTLED LAND.

### DEED OF DISCHARGE *by* TRUSTEES *from* TRUST *of* SETTLED LAND (*u*).

THIS DISCHARGE, made the —— day of ——, BETWEEN A., of, &c., and B., of, &c. (herein called "the trustees"), of the one part, and C., of, &c. (herein called "the estate owner"), of the other part. WHEREAS by a Vesting Deed [*principal or last vesting deed*], dated, &c., and made between [*parties*], the hereditaments therein described [referred to] (herein called "the settled land") are vested in the estate owner in fee simple upon the trusts of the Deed therein referred to (herein called "the Trust Instrument"), and the trustees are the persons who in (*x*) the said Vesting Deed [Memorandum dated, &c., endorsed on

Recital as to present estate owner and trustees;

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(*u*) See S. L. Act, 1925, sect. 17, set out under General Remarks, above. The estate owner, although perhaps not a necessary party, is joined so as to testify that he holds the land free from all equitable interests and powers, and that he has requested the trustees to discharge the land from the trust

(*x*) See p. 219, note (*h*), and pp. 36, 37.

[annexed to] the said Vesting Deed] were declared to be the trustees of the settlement for the purposes of the Settled Land Act, 1925. AND WHEREAS the estate owner of the settled land now holds the same free from all equitable interests and powers under the Trust Instrument, and has requested the trustees to execute a Deed of Discharge, and the trustees have no notice of any derivative settlement, trust for sale or equitable charge affecting the settled land, and upon such request and at the cost of the trust estate have agreed to execute these presents in manner hereinafter appearing. NOW THIS DEED WITNESSETH that in pursuance of the said agreement, and in consideration of the premises, the trustees, pursuant to sect. 17 of the Settled Land Act, 1925, Do hereby DECLARE that they are discharged from the trust so far as regards the settled land. IN WITNESS, &c.

PRECEDENT XXVIII.

DISCHARGE BY TRUSTEES OF SETTLED LAND.

—of agreement for discharge.

Discharge from trust.

## WILLS.

### General Remarks.

New law of intestacy.

It would often help an intending testator if, before making any testamentary disposition, he knew exactly how the State will dispose of his property in the event of his death intestate, and for this reason a short reference to the new law may be useful.

By the A. E. Act, 1925, important changes have been made in the law of intestacy. Freeholds no longer (except in cases saved by the A. E. Act, 1925, sect. 51) descend to the heir-at-law (A. E. Act, 1925, sect. 45).

Now on the death of a person intestate as to any "real" (A. E. Act, 1925, s. 55, sub-s. (1) (xix)) or personal estate, such estate is to be held upon trust for sale, and the proceeds are applicable for purposes of administration.

Distribution of residuary estate of intestate.

The residue of such money and the unsold part of his estate constitute "the residuary estate of the intestate" (A. E. Act, 1925, s. 33), and is now distributable in the manner mentioned in sect. 46, as explained by sects. 47—52 of the A. E. Act, 1925. The main provisions of sect. 46 may be summarised as follows :—

Summary of A. E. Act, 1925, s. 46.

#### Distribution of Residuary Estate of Female Intestate.

[*With variations in brackets for male intestate.*]

I. Spinster [bachelor].
   (1) Parents absolutely (if both living, equally).
   (2) Brothers and sisters of whole blood on "statutory trusts."
   (3) Brothers and sisters of half blood on "statutory trusts."
   (4) Grandparents (if more than one living, equally).
   (5) Uncles and aunts of whole blood on "statutory trusts."
   (6) Uncles and aunts of half blood on "statutory trusts."
   (7) Crown, or Duchy of Lancaster, or Duke of Cornwall, as "bona vacantia."

II. Married, but leaving no husband [wife] or issue, then as in I.

III. Married, leaving no husband [wife], but leaving issue.
   (1) Issue on "statutory trusts."
   (2) If no issue attain vested interest, then as in I.

IV. Married, leaving husband [wife], but no issue.

(1) Husband [wife] (a) " personal chattels "; (b) £1,000; (c) rest of property for life.

(2) Subject thereto, as in I., (1) to (6), but if none take absolutely, to surviving husband [wife] absolutely.

V. Married, leaving husband [wife], and issue.

(1) Husband [wife] (a) " personal chattels "; (b) £1,000.

(2) *One-half* of rest of property.

(a) Husband [wife] for life.

(b) Subject thereto, to issue on " statutory trusts."

(c) If issue die before attaining vested interest, then, subject to life interest, as in IV. (2).

*Other half* of rest of property.

(a) Issue on " statutory trusts."

(b) If issue die before attaining vested interest in lifetime of husband [wife] to husband [wife] for rest of life.

(c) Subject thereto, as in IV. (2).

" Bona vacantia."

The right of the Crown to take the estate as " bona vacantia " extends to the case of partial intestacy where it does not appear by the Will that the personal representative is intended to take such part beneficially : see *Re Jones*, [1925] Ch. 340, and A. E. Act, 1925, s. 49.

Meaning of " statutory trusts " for issue and other relatives.

The expression " statutory trusts " is explained in sect. 47 of the A. E. Act, 1925, under which the children, if more than one, and the issue *per stirpes* of any deceased child, take in equal shares on attaining 21 or (whether male or female) marrying under that age. The statutory powers of maintenance and accumulation, and of advancement, are applicable until the interest or share is vested. Money advanced is to be brought into hotchpot, but this provision is excluded in the case of other relatives. An infant contingently entitled may have the use of such " personal chattels " as the personal representatives may consider reasonable. As to relatives, other than issue of the intestate, when the residuary estate is directed to be held on the statutory trusts for a class of such other relatives, the same is held on trusts corresponding to the statutory trusts for the issue of the intestate (except as to advanced money being brought into hotchpot), as if such trusts were repeated " with the substitution of references to the members or member of that class for references to the children or child of the intestate." For example, read sect. 47, sub-sect. (1) (i) as if " uncle " were substituted for " child."

Meaning of "personal chattels."

As to the meaning of "personal chattels" in the A. E. Act, 1925, see sect. 55, sub-sect. (1) (x), where a detailed list is set out of furniture and effects and articles of household use and ornament, but chattels used for business purposes are excluded, and compare "The Statutory Will Forms, 1925" set out below as Precedent XVII.

Husband's right to wife's property.

It will be noted that the husband no longer has the same right to his wife's personalty as he formerly enjoyed on her intestacy.

Power of tenant in tail to dispose by will.

A tenant in tail may now dispose by Will of all property to which, at his death, he is tenant in tail in possession, as if he had been tenant in fee simple or absolute owner thereof. This new power is conferred by sect. 176 of the L. P. Act, 1925, which is as follows :—

L. P. Act, 1925, s. 176.

**176.**—(1) A tenant in tail of full age shall have power to dispose by will, by means of a devise or bequest referring specifically either to the property or to the instrument under which it was acquired or to entailed property generally—

(a) of all property of which he is tenant in tail in possession at his death; and

(b) of money (including the proceeds of property directed to be sold) subject to be invested in the purchase of property, of which if it had been so invested he would have been tenant in tail in possession at his death;

in like manner as if after barring the entail he had been tenant in fee-simple or absolute owner thereof for an equitable interest at his death, but, subject to and in default of any such disposition by will, such property shall devolve in the same manner as if this section had not been passed.

(2) This section applies to entailed interests authorised to be created by this Act as well as to estates tail created before the commencement of this Act, but does not extend to a tenant in tail who is by statute restrained from barring or defeating his estate tail, whether the land or property in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services or not, or to a tenant in tail after possibility of issue extinct, and does not render any interest which is not disposed of by the will of the tenant in tail liable for his debts or other liabilities.

(3) In this section "tenant in tail" includes an owner of a base fee in possession who has power to enlarge the base fee into a fee-simple without the concurrence of any other person.

(4) This section only applies to wills executed after the commencement of this Act, or confirmed or republished by codicil executed after such commencement.

As to the above statutory power, note the exception in sect. 40 of the F. & R. Act, 1833, "not being a will."

In the operation of this section the crucial date is the date of death, so a person who at the date of the Will is tenant in tail

in remainder may, it is thought, purport to exercise the power, but the devise or bequest will not take effect unless at his death he is tenant in tail in possession. So also may the owner of a base fee who at the date of his Will could not without the concurrence of the protector have enlarged it into a fee simple; and the devise or bequest will take effect if, at his death, he would, if his estate tail had not been so barred, have been actual tenant in tail in possession (see sub-sect (3) above, and F. & R. Act, 1833, sect. 19.)

When tenant in tail likely to exercise power.

In practice, it is hardly likely that a person who is tenant in tail in possession prior to the date of his Will, will rely on the power conferred by the Act, but would generally execute a disentailing assurance and get in the legal estate. Even a tenant in tail in remainder, who has purported to exercise the power in his Will, if he should come into possession, may be well advised to bar the entail in the usual way.

Conditions as to exercise of power.

It is to be noted that in exercising his power he must specifically refer either (a) to the property, or (b) to the instrument under which his entailed interest was acquired, or (c) to entailed property generally.

For an example of an exercise of this power, see Precedent XV.

Where power not exercised.

Apart from such exercise of the testamentary power, an entailed interest ceases on the death of the tenant in tail and passes to the successor in title (A. E. Act, 1925, sect. 3, sub-sect. (3); L. P. Act, 1925, sect. 130, sub-sect. (4), sect. 176, sub-sect. (1)). But if the power is effectively exercised the absolute interest passes to the devisee or legatee (L. P. Act, 1925, sect. 176, sub-sect. (1) above), but subject to the assent of the personal representatives of the testator, for the interest vests primarily in them, and forms part of the assets for payment of debts (see A. E. Act, 1925, sects. 1, 3, sub-sect. (2), and sect. 32).

Marriage when not revoking Will.

A special power is now conferred on a testator, who contemplates marriage, so to dispose of his property that his Will shall not be revoked by the contemplated marriage, thereby creating an exception to the former rule that marriage revoked a Will. This new power is contained in sect. 177 of the L. P. Act, 1925, which is as follows :—

L. P. Act, 1925, s. 177.

**177.**—(1) A will expressed to be made in contemplation of a marriage shall, notwithstanding anything in section eighteen of the Wills Act, 1837, or any other statutory provision or rule of law to the contrary, not be revoked by the solemnisation of the marriage contemplated.

(2) This section only applies to wills made after the commencement of this Act.

For a specimen of such a Will, see Precedent XVI.

Will of bastard.

The powers of a bastard were by some commentators supposed to have been doubtful as regards real estate, and, as he could have no heir, it was suggested that sect. 3 of the Wills Act, 1837, was not applicable (see Williams R. P., 19th ed. (1901), 56, note (i), and 23rd ed. (1910), 57, note (i)), but sect. 178 of the L. P. Act, 1925, provides as follows :—

L. P. Act, 1925, s. 178.

> **178.** Section three of the Wills Act, 1837 shall (without prejudice to the rights and interests of a personal representative) authorise and be deemed always to have authorised any person to dispose of real property or chattels real by will notwithstanding that by reason of illegitimacy or otherwise he did not leave an heir or next of kin surviving him.

Construction of wills.

In the construction of Wills coming into operation after 1925, unless the context otherwise requires, "month" means "calendar month," "person" includes "corporation," singular includes plural, and masculine includes feminine, and *vice versa* (L. P. Act, 1925, sect. 61).

Rule in *Shelley's Case.*

The rule of law hitherto applied in the construction of Wills, known as the *Rule in Shelley's Case* (1581), 1 Rep. 93*b*, to the effect that the words "heir," "heirs" "issue" were words of limitation (see *e.g.*, *Re Hack*, [1925] Ch. 633) is now reversed, and a gift "to the heir or heirs or issue or any particular heir or any class of the heirs or issue of any person" now operates in equity as words of purchase and not of limitation (see L. P. Act, 1925, sect. 131).

The effect of this alteration in the law of construction of Wills is to substitute a converse rule of law, which may not (as the *Rule in Shelley's Case* often did not) carry the testator's intention into effect, and is not unlikely to hamper the Court when attempting to ascertain the true intention of a testator, which might otherwise have been inferred from an unfettered construction of the Will as a whole, if the old rule had merely been abolished.

Rule in *Wild's Case.*

Another rule formerly applied in the construction of Wills, known as the *Rule in Wild's Case* (1599), 6 Rep. 16*b*, to the effect that a devise of real estate to "A. and his children" gave A. an estate tail, is now abrogated by sect. 130, sub-sect. (2) of the L. P. Act, 1925, set out under DISENTAILING DEEDS, General Remarks. The test in future would seem to be, what interest would these words confer if the property had been personal estate? But the wording of the sub-section should be carefully examined. In some cases under the former law the personal estate would be vested in A. absolutely and in others he would

take a life interest only, and his children would take an absolute interest in reversion (see also Hawkins on Wills (1925), pp. 24, &c.).

Settlements created by Will.

As to settlements created by Will, whether of land or other property, and in the case of land whether by trust for sale or as settled land under the S. L. Act, 1925, and as to the powers conferred on trustees for sale, on a tenant for life, and on the trustees of the settlement, and as to settlements generally, see SETTLEMENTS, General Remarks.

Form of Will.

The object of these Precedents is, of course, to give examples of properly drawn Wills, but "the law has not made it requisite to the validity of a Will that it should assume any particular form" (Jarman on Wills (1910), p. 33). The document, whatever it is, must, however, be of a testamentary nature and be intended as a testamentary act (*Re Beech*, [1923] P. 46, at 55, &c.).

Instructions to solicitor.

The instructions to a solicitor to prepare a Will, even though executed in accordance with the requirements of the Wills Act, 1837, will not operate as a testamentary disposition, apart from evidence that such was the intention (see *Coventry* v. *Williams* (1844), 3 Curt. 787). But it is considered that if a document containing such instructions was so executed with the usual attestation clause acknowledging the document as a Will this would be sufficient. It may often be a wise precaution for a solicitor to see that such instructions are so executed, especially if the testator is in precarious health.

Position of date of Will.

The modern practice as to the commencement of a Will varies, and the date is sometimes placed at the beginning instead of at the end, but, it is thought, that placing the date at the beginning is open to objection, if only on the ground of inconvenience at the time of execution.

Revocation clause.

Every Will should contain a clause expressly revoking all former testamentary dispositions, although a Will by which a testator's whole estate is effectually disposed of operates as a revocation of any prior will; but a mere statement in a Will that it is the testator's "last Will" does not necessarily imply an intention to revoke previous testamentary instruments. (*See* Jarman on Wills (1910), pp. 172, &c.) Any testamentary disposition intended to take effect by way merely of modification of a prior Will should be framed expressly as a Codicil.

So, also, a Codicil should contain a clause expressly revoking that part of the Will which is not intended to stand, even though clearly inconsistent with the Will. Otherwise it may be necessary to apply to the Court to decide as to its effect, as for example in *Re Stoodley*, [1916] 1 Ch. 242, where the Will contained a

gift of the residue to A. and by Codicil the testator gave "the residue of my estate not bequeathed by the above Will" to B., and the Court of Appeal held that the Will was revoked by the Codicil. See further as to the effect of the presence or absence of a revocation clause in a Codicil, *Re Bernard*, [1916] 1 Ch. 552; *Ward* v. *Van der Loeff*, [1924] A. C. 653.

Appointment of executor.

Except where the whole estate is given to one person and that person is appointed executor (as in Precedent I), the appointment of executors is now generally the first clause in the Will. Where the executors are also made trustees, the expression "my trustees" should include the trustees or trustee for the time being: see T. Act, 1925, sect. 18, which confers the powers or trusts on the survivors or survivor, or the personal representatives of the last survivor, but not expressly on the trustees or trustee for the time being (*e.g.*, new trustees).

"Free of duty."

In the case of specific or pecuniary legacies followed by the words "free of duty," the legatees are thereby in effect, as between themselves and the residuary legatees, exempted from legacy duty, which is thus made payable out of the residuary estate. The expression "free of duty" is, however, of wider import than "free of legacy duty," and primarily means "free of all duties" (see *Re Turnbull*, [1905] 1 Ch. 726; *Re Kennedy*, [1917] 1 Ch. 9; *Re Tanqueray*, [1924] W. N. 142). It might, for example, exempt the legatee, as against the residue, from the special estate duty payable on works of art, if sold by the legatee (see Finance Acts, 1896, sect. 20; 1910, sect. 63; and 1921, sect. 44; and compare *Re Scott*, [1916] 2 Ch. 268; as affected by the decision in *O'Grady* v. *Wilmott*, [1916] 2 A. C. 231). But as to estate duty generally, this, being analogous to the old probate duty, is payable out of the general residuary personal estate, and specific and pecuniary legatees bear no part of it: see *Re Webber*, [1896] 1 Ch. 914; *Re Morrison* (1910), 102 L. T. 530. By the Finance (1909-10) Act, 1910, sect. 58, sub-sect. (2), a legacy to a wife or husband is now subject to legacy duty at the rate of one per cent., and the like duty on a legacy to a lineal ancestor or descendant of the testator is no longer covered by the estate duty, except (1) when the estate does not exceed £15,000, or (2) the amount of the legacy or legacies derived by the same person does not exceed £1,000, or (3) in the case of a widow or child under twenty-one does not exceed £2,000: see *Re Waller*, [1916] 1 Ch. 153.

The expression "free of duty" has of itself no specially legal meaning, but must be construed in each case according to the provisions of the Will in question.

A difficulty occurs in the case of settled legacies, annuities, or

rentcharges as to by whom the legacy and estate duties arising on the termination of a life or other period are payable. This question has been the subject of numerous decisions, which disclose judicial opinions not altogether uniform, and cannot be said to be quite settled. But the tendency of the Courts is rather to confine the phrase to those duties which are ascertainable at the death of the testator, as opposed to future duties which are not so ascertainable (see *Re Wedgwood*, [1921] 1 Ch. 601; *Re Fenwick*, [1922] 2 Ch. 775; *Re Sutherland*, [1922] 2 Ch. 782; *Re Beecham*, [1924] W. N. 21, reversing Eve, J., [1923] W. N. 254; *Re Sarson*, [1925] Ch. 31).

If, therefore, it is desired to extend the exemption of the settled fund to such future duties, apt expressions must be used, such as "free of legacy, estate and succession duties," "free of duty so as to include exemption from duties which will become payable on a subsequent devolution under the trusts hereinbefore contained" (see *per* Sargant, J., in *Re Fenwick*, [1922] 2 Ch., at p. 779), or other language appropriate to the particular provisions of the Will, and having regard to the various death duties for the time being by law imposed.

Legacies to servants.

Gifts to servants have been the subject of numerous judicial decisions, and great care has to be exercised in framing such gifts so as to carry out the testator's intention. Difficulty seldom occurs where a particular servant is named, but in gifts to servants generally, questions often arise as to whether a particular employee of the testator is included. For example, a gift "to each person as a servant in my domestic establishment" was held by Lord Truro, L.C., not to include a head gardener who lived in one of the testator's cottages, but was not dieted by him (*Ogle* v. *Morgan* (1852), 1 D. M. & G. 359). But in *Re Jackson*, [1923] 2 Ch. 365, the Court of Appeal has held that "domestic servant" included the testator's coachman and chauffeur who occupied rooms in outbuildings, and his gardener who lived in a cottage of the testator.

The term "servant" alone has a wider meaning than "domestic servant," while the expression "indoor and outdoor servants" does not necessarily restrict the meaning of "servant" (*Re Drake*, [1921] 2 Ch. 99; not following *Re Forrest*, [1916] 2 Ch. 386), and was held by Lawrence, J., to include an estate cashier, a farm bailiff, a dairymaid, an engineer, a blacksmith, gardeners, carters, carpenters, gamekeepers, woodmen, bricklayers, farm hands, and labourers (compare *Re Cassel* (1922), 39 T. L. R. 75; *Re Rosse*, [1923] W. N. 148; 67 S. J. 638; 129 L. T. 592; *Re Brownlow*, [1924] W. N. 322).

In the case also of a testator in business a distinction may have to be drawn between his business employees (who in a sense are "servants") and his home employees (see *Re Jackson*, [1923] 2 Ch. 365, at p. 367).

As to whether casual workers are "servants" or "domestic servants," see *Townshend* v. *Windham* (1706), 2 Vern. 546 (steward of courts); *Thrupp* v. *Collett* (1858), 26 Beav. 147 (boy occasionally employed to clean boots, etc.); and compare *Re Wilkinson*, [1922] 1 K. B. 584 (charwoman); *Re Newton-King*, [1923] 1 K. B. 210 (golf caddie); and other cases under the Unemployment Insurance Acts.

It has been held that a gift to servants generally of "one year's wages" does not include servants hired at a weekly wage (*Re Ravensworth*, [1905] 2 Ch. 1), but where the gift was to servants who should for five years have been in the testator's service, it was held that weekly wage-earners were included (*Re Sheffield*, [1911] 2 Ch. 267; and see *Re Forrest*, [1916] 2 Ch. 386, at p. 389).

The above short sketch is perhaps sufficient to warn the draftsman. See further Jarman (1910), p. 1119 &c.; and *Re Lawson*, [1914] 1 Ch. 682; *Re Bell*, [1914] W. N. 89; *Re Smith*, [1915] W. N. 12; *Re Travers*, [1916] W. N. 348; *Re King*, [1917] 2 Ch. 420; *Re Cole*, [1919] 1 Ch. 218. For a form of legacies to servants see WILLS, Precedent III., p. 567.

Statutory forms of wills.

Statutory forms of Wills may now be prescribed by the Lord Chancellor under the power conferred by sect. 179 of the L. P. Act, 1925, which is as follows: —

L. P. Act, 1925, s. 179.

> **179.** The Lord Chancellor may from time to time prescribe and publish forms to which a testator may refer in his will, and give directions as to the manner in which they may be referred to, but, unless so referred to, such forms shall not be deemed to be incorporated in a will.

The forms under this section (published 7th August, 1925, see Statutory Rules and Orders, 1925, No. 780/L. 15) are called "The Statutory Will Forms, 1925." These Forms (which are intended to apply only in the case of Wills taking effect on or after the 1st January, 1926) will be found set out below in Precedent XVII. Those in Part I., which may be incorporated by general reference to that Part, may sometimes, especially in an emergency, usefully be adopted, as may also, by specific reference, such of the forms in Part II. as are merely administrative, but as to beneficial trusts the forms given in Part II. require careful examination, and it will probably be thought better in most cases to set out such trusts in full, and not to

rely, even partially or with modifications, on the statutory forms, however useful they may be as conveyancing precedents.

## PRECEDENTS.

### I.

PRECEDENT I. — IN FAVOUR OF ONE PERSON ABSOLUTELY.

WILL *giving the testator's whole property to* ONE PERSON (*a*).

I, A., of, &c., HEREBY REVOKE all prior testamentary dispositions, and DECLARE this to be my LAST WILL, AND I DEVISE and BEQUEATH all my real and personal estate unto B., of, &c., absolutely, and appoint him sole executor [her sole executrix] of this my Will, IN WITNESS whereof I, the said A., have to this my Will set my hand this —— day of ——, 19— (*b*).

Testimonium.

SIGNED and acknowledged by the above-named A. as his [her] WILL in the presence of us, present at the same time, who, in his [her] presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

Attestation.

[*Testator's signature*].

[*Signatures and descriptions of witnesses.*]

### II.

PRECEDENT II. — IN FAVOUR OF WIFE AND CHILDREN.

WILL *in favour of the testator's* WIFE *and* CHILDREN.

I., A. B., of, &c., HEREBY REVOKE all prior testamentary dispositions, and DECLARE this to be my LAST WILL.

1. I APPOINT X., of, &c., and Y., of, &c. (herein called "my trustees" which expression includes the trustees or trustee for the time being hereof (*c*)) to be the executors and trustees of this my Will [And I give to each of my above-named executors, who shall prove my Will and act in the trusts thereof, the sum of £—— free of duty (*d*)].

Appointment of executors [with legacy].

2. [I APPOINT D., of, &c., guardian of my infant children to

Appointment of guardian.

(*a*) As to the form of a Will generally, of its commencement, and the revocation clause in a Will or Codicil, see General Remarks, above.

(*b*) The mode of executing a document intended to operate as a testamentary disposition is regulated by sect. 9 of the Wills Act, 1837: see also Jarman on Wills (1910), pp. 104, &c., for numerous judicial decisions.

(*c*) As to this interpretation clause, see General Remarks, above.

(*d*) As to "free of duty," see General Remarks, above.

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act jointly with my wife, C. B., or with any guardian or guardians appointed by her to act after her death (*e*)].

Immediate legacy to wife.

3. I GIVE to my wife free of duty the sum of £——, to be paid to her as soon as may be after my death and in priority to all other legacies bequeathed by this my Will or any Codicil hereto.

Furniture to wife.

4. I GIVE to my wife free of duty all the furniture and effects which are usually in or about the dwelling-house in which I reside [whether temporarily stored elsewhere or not (*f*)], except money and securities for money [*or*, say "all my personal chattels as defined in and so as to incorporate Form 2 of Part I. of The Statutory Will Forms, 1925" (*g*)].

Devise and bequest of residuary estate on trust for sale;

5. I DEVISE AND BEQUEATH all my real and personal estate (including property over which I have a general power to dispose by Will) not hereby or by any Codicil hereto otherwise disposed of unto my trustees UPON TRUST for sale, calling in and conversion with power to postpone the same, including that of terminable or wasting property, and in particular to retain existing investments, but not to sell reversionary property until it falls into possession unless my trustees consider an earlier sale desirable (*h*).

—to pay debts and legacies;

6. My trustees shall out of the money arising thereby and my ready money pay my funeral and testamentary expenses (*i*), and debts and the pecuniary legacies [and pay or provide for the annuities] bequeathed by this my Will [or any Codicil hereto]

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(*e*) See Guardianship of Infants Acts, 1886 and 1925. By sect. 4 of the 1925 Act (repealing sect. 2 of the 1886 Act) the surviving parent is guardian either alone, or jointly with the guardian appointed by the deceased parent. By sect. 5 of the 1925 Act (repealing sect. 3 of the 1886 Act) either parent may by deed or will appoint any person as guardian after the death of such parent, and such guardian is to act jointly with the surviving parent, unless the surviving parent objects to his so acting. By the same section, where guardians are appointed by both parents, such guardians after the death of the surviving parent act jointly.

(*f*) See *Re Zouche*, [1919] 2 Ch. 178; and as to the meaning of "effects," see Jarman (1910), pp. 1307, &c.; *Re Hall* (1912), 107 L. T. 196; *Re Ashburnham* (1912), 57 Sol. J. 28; *Re White*, [1916] 1 Ch. 172; *Re Fortlage*, [1916] W. N. 214; 60 Sol. J. 527.

(*g*) See Precedent XVII., and General Remarks, p. 562.

(*h*) As to reversionary property, see *Re Chesterfield* (1883), 24 Ch. D. 643, and *Re Baker*, [1924] 2 Ch. 271.

(*i*) "Testamentary expenses" include all expenses necessary to obtain an effectual grant of probate (*Re Clemow*, [1900] 2 Ch. 182), and therefore the estate duty on all property which passes to the executor in that character: see *Re Pullen*, [1910] W. N. 60; *O'Grady* v. *Wilmot*, [1916] 2 A. C. 231, and A. E. Act, 1925, sects. 1 to 3. Where, as in this Precedent, legacies are directed to be paid out of a mixed fund, they will, in the absence of a direction to the contrary, bear their own estate duty so far as they are payable out of the portion of the fund attributable to realty: *Re Spencer Cooper*, [1908] 1 Ch. 130. As to death duties on settled legacies, see cases cited at p. 561.

and the duty on all legacies [and annuities] bequeathed free of duty (such payments being made primarily out of my residuary personal estate) [and so as to exclude the rule known as that in *Allhusen* v. *Whittell* (*k*).].

—to invest residue;

7. My trustees shall invest the residue of the said money in any investment for the time being authorised by law for the investment of trust money (*l*) with power to vary any investment.

—to pay income to wife for life;

—and after her death for children.

8. (1) My trustees shall hold my residuary estate and the investments representing the same (herein called "the residuary fund") UPON TRUST to pay the income thereof to my wife during her life, AND after her death as to both capital and income IN TRUST for my child or children living at my death who [being male] attain the age of twenty-one years, or [being female attain that age or] marry under that age, and if more than one in equal shares (*m*): (2) My trustees may after the death of my

Power of advancement.

(*k*) As to the rule in *Allhusen* v. *Whittell* (1867), L. R. 4 Eq. 295, see *Re McEuen*, [1913] 2 Ch. 704; *Re Wills*, [1915] 1 Ch. 769; *Re Waller*, [1916] 1 Ch. 153, 161. This clause would probably not be required except in the case of large estates, and is confined to cases where the residuary fund is held in trust for two or more persons in succession (see per Lord Cave in *Barnardo's Homes* v. *Special Income Tax Commissioners*, [1921] 2 A. C. 1, at p. 10).

(*l*) Or other investments authorised, see next Precedent, at p. 568.

(*m*) This trust for children, as a class, includes only children living at the testator's death, and therefore would not give, under sect. 33 of the Wills Act, 1837, any share to a child predeceasing the testator, but leaving issue living at the testator's death. See Jarman (1910), p. 449.

A Will of this kind, simply dividing the testator's property among his children equally, will most frequently be made while the children are all young, but when made in favour of adult children, some provision for a child dying before the testator and leaving issue may often be desirable. Such provision may be made as follows:—

"IN TRUST for my child or children living at my death and the child or children then living of any child of mine who may be then dead, who [being male] attain the age of twenty-one years or [being female attain that age or] marry under that age, and if more than one in equal shares *per stirpes* so that the children of a deceased child of mine shall take equally between them only the share which his, her, or their parent would have taken had such parent survived me and attained a vested interest."

Sect. 33 applies where the gift is to the children by name: see *Re Wilson* (1920), 89 L. J. Ch. 216; 123 L. T. 165; 64 Sol. J. 389.

Alternatively, the children of a deceased child may be substituted by a separate clause:—

Clause substituting issue of child predeceasing testator.

"If any child of mine shall die in my lifetime leaving a child or children living at my death, such grandchild or grandchildren who [being male] attain the age of twenty-one years, or [being female attain that age or] marry under that age, shall take by substitution, and if more than one in equal shares *per stirpes*,

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wife or previously thereto with her consent in writing raise any part or parts not exceeding altogether in amount one half of the then expectant presumptive or vested share or interest of any child [or grandchild] of mine in the residuary fund, and apply the same for his or her advancement or benefit (*n*) : (3) IF there shall be no child of mine living at my death, who [being a son] attains the age of twenty-one years, or [being a daughter attains that age or] marries under that age, then, from and after the death of my wife, and such default or failure of children (*o*), the residuary fund and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained or by law implied, shall be held by my trustees IN TRUST for such of my brothers and sisters living at my death, and for such of the issue living at my death of any of my brothers and sisters who may have died in my lifetime, as respectively [being male] attain the age of twenty-one years, or [being female attain that age or] marry under that age, and if more than one in equal shares *per stirpes*.

Disposition in default of children entitled under the preceding trusts.

Ultimate trust for brothers and sisters, and their issue *per stirpes* (*p*).

Powers to manage, let, and mortgage land (*q*).

9. My trustees may until sale exercise all the powers of absolute owners including power to manage and let on lease or on any tenancy my real and leasehold estates and [with the consent of my wife during her life] to raise money by mortgage or charge

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the share in the residuary fund which such deceased child of mine would have taken had he or she survived me and attained a vested interest."

Where it is desired that the share of a child dying in the testator's lifetime leaving issue shall go to his legal personal representatives, the following form may be used :—

Clause substituting representatives of child predeceasing testator leaving issue.

"If any child of mine shall die in my lifetime leaving a child or children [issue] living at my death, the interest which such child if surviving me would have taken shall devolve as if such child had died immediately after me."

(*n*) As to the implied statutory power of advancement, see T. Act, 1925, sect. 32, set out in SETTLEMENTS, General Remarks. As to the omission of the maintenance and accumulation clauses, and the statutory provisions for that purpose, see T. Act, 1925, sect. 31, which applies even where vesting is postponed beyond twenty-one years of age.

Advancement, maintenance, &c

(*o*) If grandchildren are provided for, the ultimate gift should be :—

"AND if no child or grandchild of mine shall attain a vested interest under the trusts hereinbefore contained, then from and after the death of my said wife and such default or failure of children and grandchildren," &c.

(*p*) The class here is ascertainable within the limits of the Rule of Perpetuity : compare *Ward* v. *Van Loeff*, [1924] A. C. 653.

(*q*) This power is, of course, very wide, and should be compared with the more limited power conferred in the next Precedent.

for the purpose of making any outlay which they may consider proper for the benefit of my real and personal estate; but no mortgagee or chargee shall be concerned to inquire whether or not such money is required or is properly raised.

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10. The net income produced from all or any part of my estate, howsoever invested and of whatsoever description, shall as from my death be applicable as income, but no property which for the time being is not actually producing income shall be treated as producing income or entitling anyone to receipt of income (*r*). IN WITNESS, &c.

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## III.

WILL *of* REAL *and* PERSONAL ESTATE *for the Benefit of the Testator's* WIFE *during Widowhood, and* CHILDREN. SETTLEMENT *of* DAUGHTERS' SHARES *and* OTHER PROVISIONS (*s*).

PRECEDENT III. IN FAVOUR OF WIFE DURING WIDOWHOOD, AND CHILDREN, WITH SETTLEMENT OF DAUGHTERS' SHARES.

I, A. B., of, &c. [*revoking prior Wills; appointment of executors, &c., as in Precedent preceding*].

4. I GIVE to my wife C. B., free of duty, all my watches, jewels, ornaments of the person, and wearing apparel, and all my furniture (*t*), plate, plated articles, linen, glass, china, pictures, prints, antiques, curios, objects of art, musical instruments, books, and wines, liquors and consumable stores and provisions, and other articles of household use or ornament, and also my [motor cars], horses, carriages, saddlery, harness, stable [and motor house] furniture, live and dead stock, tools, implements, and utensils, and other effects [which (whether temporarily stored elsewhere or not (*u*)) usually are or shall be at my death in or about or belonging to my dwelling-house known as ——, or other my usual place of residence at my death or the outbuildings or grounds thereof].

Gift to wife of furniture, &c., in and about a house.

5. I GIVE the following pecuniary legacies, free of duty, (1) TO each of my indoor and outdoor servants regularly employed by me in or about my home, who shall be in my service at my death, and shall have been in such service for not less than two years immediately preceding my death, and shall not then be under notice to leave, whether given or received, the sum of £—— [a sum equal to the aggregate of his or her wages for one year,] in

Pecuniary legacies to servants and others.

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(*r*) Add here, if desired, a power to the wife during her life to appoint new trustees, and usual trustees' powers as in the next Precedent.

(*s*) Compare the last preceding Precedent and the notes thereto.

(*t*) As to tenant's fixtures, see Precedent IV., note (*o*).

(*u*) See note (*f*) to preceding Precedent.

PRECEDENT III.

IN FAVOUR OF WIFE DURING WIDOWHOOD, AND CHILDREN, WITH SETTLEMENT OF DAUGHTERS' SHARES.

addition to any wages due to him or her (*x*); (2) TO —— of —— the sum of £—— [*&c., naming other legatees*].

6. I DEVISE and BEQUEATH all my real and personal estate not hereby or any Codicil hereto otherwise disposed of unto my trustees UPON TRUST [*Trust for sale, &c., as in Precedent II.*].

7. My trustees SHALL INVEST the residue of the said money [in their names or under their legal control] in any investment then authorised by law for the investment of trust money or in [*Continue as in Precedent II. of* SETTLEMENTS, *with any necessary variations* (*y*)], with power to vary any investment.

Residuary estate on trust for sale, &c.

Trust for investment.

Trust to pay income to wife;

—and afterwards in trust for testator's issue.

Hotchpot clause.

Daughters' shares settled.

8. My trustees shall hold my residuary estate and the investments representing the same (herein called "the residuary fund") (1) UPON TRUST to pay the income thereof to my wife during her widowhood: (2) AND AFTER her death or marriage (whichever event shall first happen) as to both capital and income, [IN TRUST for all or any of my issue (*z*), and in such manner and form in every respect as my wife shall, so long as she shall remain unmarried, by Deed, or Will, or Codicil appoint; and IN DEFAULT of, and subject to, any such appointment,] IN trust for all my children, or any my child living at my death, who [being male] attain the age of twenty-one years [or being female attain that age] or marry under that age, and if more than one in equal shares: [PROVIDED ALWAYS, that no child who or whose issue shall take any part of the said premises under any such appointment as aforesaid shall, in default of appointment to the contrary, be entitled to any share of the unappointed part of the said premises, without bringing the share appointed to him or her, or his or her issue, into hotchpot]; PROVIDED that as to every daughter of mine living at my death who attains the age of twenty-one years or marries under that age, the share hereinbefore provided for such daughter in the residuary fund shall (subject and without prejudice to the preceding trusts and powers including the power of varying investments [and the power of

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(*x*) As to legacies to servants, see General Remarks, p. 561. Small legacies to servants are generally intended to be free from duty.

(*y*) Other powers of investment will be found in the note to Precedent II. of SETTLEMENTS. The words "in the names or under the legal control of my trustees" will be omitted if the clause below, allowing contributory mortgages, is inserted: see *Webb* v. *Jones* (1888), 39 Ch. D., at p. 666.

(*z*) The following addition at this point may generally be made with advantage:—

"if more than one in such shares and with such executory or other trusts for their respective benefit and such powers of advancement (either overreaching her interest or not), and generally in such manner," &c.

PRECEDENT III.

IN FAVOUR OF WIFE DURING WIDOWHOOD, AND CHILDREN, WITH SETTLEMENT OF DAUGHTERS' SHARES.

appointment hereinbefore given to my said wife]) be held by my trustees upon the trusts and subject to the powers and provisions hereinafter declared and contained concerning the same (that is to say) (1) UPON TRUST to pay the income thereof to such daughter during her life, but without power of anticipation, (2) AND after the death of such daughter (as to both capital and income), IN TRUST for all or any of her children or remoter issue, in such manner as she shall by Deed, or Will, or Codicil appoint, (3) AND IN DEFAULT of and subject to any such appointment IN TRUST for all or any the children or child living at my death or born afterwards of such daughter, who [being male] attain the age of twenty-one years, or [being female attain that age or] marry under that age, and if more than one in equal shares; (4) PROVIDED, that no child of such daughter, who or whose issue shall take any part of the same share under any such appointment as last aforesaid, shall in default of appointment to the contrary be entitled to any share in the unappointed part thereof without bringing the share appointed to him or her, or his or her issue, into hotchpot; (5) AND if there shall be no child of such daughter of mine living at my death or born afterwards who [being male] attains the age of twenty-one years, or [being female attains that age or] marries under that age, then after the death of such daughter of mine, and such default or failure of her children (and subject to the trusts, powers and provisions herein contained or by law implied), my trustees shall hold the share of such daughter of mine, and the income thereof IN TRUST for such person or persons and for such purposes as she shall by Deed, or Will, or Codicil appoint; (6) AND in default of and subject to such appointment as well the original share of such daughter as any share or shares which may accrue to her under the present provision or any other provision of accruer herein contained, shall (subject as aforesaid) accrue by way of addition to the shares or share of my other children or child living at my death, who [being sons or a son] attain the age of twenty-one years, or [being daughters or a daughter attain that age or] marry, equally between them if more than one, and so that every such addition to any share shall, as from the time of its accruer thereto, follow the destination of the share to which it shall be so added, and be for all purposes inseparably blended therewith (*a*); (7) PROVIDED

Trusts of daughters' shares.

Income to daughters for life.

Capital for issue as they appoint.

In default for their children.

Hotchpot clause.

In default of children, capital of each share to go as she shall appoint.

And in default to accrue to other shares.

Power to give life interests to husbands.

(*a*) The following is an alternative form :—

"IN TRUST for such person or persons as under the law of intestacy for the time being would have become entitled thereto at the death of such daughter had she died possessed thereof as part of her estate, intestate, and without having been married,

In default of appointment for her statutory next-of-kin,

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that every daughter of mine living at my death may by Deed executed in contemplation of her marriage (though an infant), or by Will or Codicil, appoint that all or any part of the income of her original share and any accruing share or shares shall from and after her death be paid to any husband of hers who may survive her, for his life or any less period with or without restriction, and any interest so appointed shall take effect in priority to the interests of her issue, but subject and without prejudice to the trusts and powers preceding her own interest.

Shares of daughters dying in testator's lifetime, leaving issue, to be held as if they had survived him (*b*).

10. PROVIDED, that as to every daughter of mine dying in my lifetime leaving children or a child living at my death, the original share and any accruing share or shares herein provided for such daughter in my residuary estate in the event of her being alive at my death shall be held upon the trusts and with and subject to the powers and provisions upon, with and subject to which the same would under this my Will have been held if such daughter had survived me, and died immediately afterwards, having by Will appointed that the income of the same share or shares should be paid to her surviving husband (if any) during his life.

Shares of sons dying in testator's lifetime to be in trust for their children, and in default to accrue to other shares.

11. PROVIDED, that as to every son of mine attaining the age of twenty-one years, and (*c*) dying in my lifetime, leaving children or a child living at my death, as well the original share as any accruing share or shares herein provided for such son in the event of his being alive at my death, shall (subject and without prejudice to the preceding trusts and powers, including the power of varying investments [and the power of appointment hereinbefore given to my said wife]) be held in trust for all his children or any his child living at my death, who [being sons or a son] attain the age of twenty-one years, or [being daughters or a daughter attain that age or] marry, and if more than one in equal

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so as to exclude a husband.

such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes."

As to the effect of the words "without having been married" in a similar clause in a marriage settlement, see *Boyce* v. *Wasbrough*, [1922] 1 A. C. 425, affirming *Re Ellis*, [1921] 1 Ch. 230; but here no such difficulty can arise, and there seems no good reason for altering the accepted form.

(*b*) This clause and that immediately following are required, because the testator's children take as a class, so as to exclude children predeceasing him. See note (*m*) to Precedent II.

(*c*) If it is desired to let in children of a son dying in the testator's lifetime under twenty-one and leaving issue, the words "attaining the age of twenty-one years and" will be omitted here, and after the words "in the event of his being alive at my death," the words "and attaining a vested interest" will be added.

shares, and in default of any such child shall accrue by way of addition to the shares or share of my other children or child living at my death, who [being sons or a son] attain the age of twenty-one years, or [being daughters or a daughter attain that age or] marry, equally between them if more than one and so that every such addition to any share shall, as from the time of its accruer thereto, follow the destination of the share to which it shall be so added and be for all purposes inseparably blended therewith.

Power of advancement.

12. PROVIDED that my trustees may raise any part or parts not exceeding altogether in amount one-half of the expectant or presumptive or vested [or appointed] share or interest for the time being of any child or other issue of mine, under any of the trusts of this my Will, and pay or apply the same for the advancement (*d*) or benefit of such child or issue in such manner as my trustees shall think fit, but so that during the pendency or contingency of any prior life or other interest the exercise of such power of advancement be with the consent in writing of the person or persons entitled to such prior interest.

Ultimate trust to prevent lapse.

13. In the event of the failure or determination of all or any of the trusts herein declared and subject thereto and to the powers and provisions herein contained or by law implied and to the exercise of any such power the residuary fund and the income thereof, or so much thereof respectively as shall not have become vested or been paid or applied thereunder, shall be held by my trustees IN TRUST for —— absolutely (*e*).

New trustees.

14. I hereby nominate my wife during widowhood for the purpose of appointing new trustees of this my Will.

Powers of management and leasing.

15. My trustees may until sale manage and cultivate my real and leasehold estates, and exercise over and in relation thereto all such powers of management and leasing as are conferred by law, including all the powers conferred by sect. 102 of the Settled Land Act, 1925. AND I appoint my trustees to be trustees for the purposes of the last-mentioned section (*f*), and also may make out of the income or capital of my real and personal estate any outlay which my trustees may consider proper for improvements, repairs, insurance, calls on shares, premiums on policies, or otherwise for the benefit or in respect of my real and personal estate [but so that generally but subject to their absolute discretion where they otherwise think fit the cost of ordinary repairs and other outgoings of a recurrent nature only shall be paid out of income, and that the cost of making structural alterations to any building, whether undertaken voluntarily or

(*d*) See note (*n*) to Precedent II.
(*e*) See other forms of ultimate trusts in Precedents II. and IV.
(*f*) See T. Act, 1925, sects. 28 and 29, and S. L. Act, 1925, sect. 102.

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required to be done by any local authority, shall be paid out of capital (*g*)].

16. The net rents and profits or other income of my real or personal estate, previously to the conversion or collection thereof, shall be applied as if the same were income arising from investments hereinbefore authorised, and all income produced from my estate in its actual condition for the time being (whether consisting of property or investments of an authorised or of an unauthorised description, and whether of a wasting or permanent character), shall as well during the first year from my death, as afterwards, be applicable as income under the trusts of this my will, no part thereof being in any event liable to be retained as capital [and so as to exclude the rule known as that in *Allhusen* v. *Whittell* (*h*)], but no reversionary or other property not for the time being actually producing income (*i*) shall be treated as producing income, or as entitling any person to income in respect thereof (*k*).

Rents and profits as income.

Power to settle questions (*l*).

17. My trustees (in addition to any power by law implied) may determine what articles pass under any specific bequest contained in this my Will or any Codicil hereto, what money is capital and what is income, and whether any money is to be treated as or paid out of capital or income and also the value of any property, and generally all matters as to which any doubt, difficulty, or question may arise under any of the trusts or powers contained in this my Will or any Codicil hereto (including the apportionment of blended trust funds) whether or not personally interested in the result of such determination.

Power to lend on contributory mortgage, &c. (*m*).

[18. My trustees (in addition to any power by law implied) may lend money in conjunction with any other person or persons by way of contributory loan, and allow the security for the same

(*g*) *Re De Tabley*, [1896] W. N. 162; 31 L. J. Ch. 638; 75 L. T. 328; and *Re Bellinger*, [1898] 2 Ch. 534. It is conceived that this power ought to be exercised generally in accordance with the words within brackets, but that the subsequent power to settle questions will enable the trustees to depart under special circumstances from the strict observance of the rule.

(*h*) See note (*k*) to Precedent II.

(*i*) See *Re Hubbuck*, [1896] 1 Ch 754, the operation of which (as well as of *Re Lewis*, [1907] 2 Ch. 296) is conceived to be avoided by the above clause. Whether the rule in *Howe* v. *Dartmouth* (1802), 7 Ves. 137*a*, will be excluded by a trust, on the determination of the life interest, to divide the residue: see *Re Evans*, [1921] 2 Ch. 309; *Re Barratt*, [1925] Ch. 550. As to the adjustment of the rights of tenants for life and remaindermen in a fund representing an authorised mortgage which has proved insufficient, see *Re Atkinson*, [1904] 2 Ch. 160; *Re Taylor's Trusts*, [1905] 1 Ch. 734; *Re Broadwood's Settlements*, [1908] 1 Ch. 115.

(*k*) Compare this clause with sect. 28, sub-sect. (2) of the L. P. Act, 1925.

(*l*) See *Re Mackay*, [1911] 1 Ch. 300, and *Re Allsop*, [1914] 1 Ch. 1, as to the protection afforded by a power to settle questions: see also T. Act, 1925, sects. 15, 22.

(*m*) As to investments by trustees by way of loan, see T. Act, 1925,

to be taken in the name or names of such person or persons jointly with my trustees or any of them, or exclusively or otherwise, and may accept any security subject to prior incumbrances, and may postpone or release (either gratuitously or otherwise) any security held by them as an investment in respect of any part of the property comprised therein on being satisfied that the remainder of the property comprised therein is a sufficient security for the money invested.]

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Power to appropriate in satisfaction of legacies or shares of residue (*n*).

19. I EMPOWER my trustees in addition to any other power implied by law, so far as not hereby varied, and in particular [notwithstanding the provisions of the Administration of Estates Act, 1925] without the consent of any other person, at any time to appropriate or allot any part or parts of my estate, whether real or personal, in its then actual condition or state of investment in or towards satisfaction of any legacy or share or interest in the residuary fund at such valuation or estimate of value as my trustees shall think fit having regard to the rights of all persons interested, and to execute and make such conveyances, assurances, or transfers of any property so appropriated or allotted as may be necessary or proper.

Business trustee may charge.

20. Any executor or trustee acting in relation to my estate or the trust property in any professional or business capacity, shall in respect of acts so done (and without regard to the question whether they strictly belong to such profession or business, or are such as a trustee could do personally) be entitled to charge and be remunerated out of my estate or the trust property as a stranger. IN WITNESS, &c.

## IV.

PRECEDENT IV.

IN FAVOUR OF WIFE FOR LIFE, AND CHILDREN AND GRANDCHILDREN.

WILL *of* REAL *and* PERSONAL ESTATE *for the Benefit of the Testator's* WIFE *for Life, and his* CHILDREN, *and the* CHILDREN *of any* CHILD *predeceasing him.* TRUST *of* FURNITURE *for wife and children.* OPTION *for son to* PURCHASE *land.*

I, A. B., of, &c. [*revoking prior wills.* 1. *Appointment of executors, &c., as in Precedent II.*].

sects. 1-11. A power to lend on contributory mortgage is exceptional, and should only be added by express direction of the testator, but some of the other powers conferred by this clause may be usefully inserted.

(*n*) This power would rarely be exercised in respect of real estate. As to the general power given by law, see *Re Beverly*, [1901] 1 Ch. 681. But difficult questions sometimes arise so that trustees are often unwilling to make appropriations without an express authority. See *Re Wragg*, [1919] 2 Ch. 58. The power given by the A. E. Act, 1925, sect. 41, applies only to personal representatives. As to the liability to *ad valorem* stamp duty of transfers pursuant to appropriations where there is no express power, see *Dawson* v. *I. R. Commrs.*, [1905] 2 I. R. 69.

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IN FAVOUR OF WIFE FOR LIFE, AND CHILDREN AND GRAND-CHILDREN.

2. I DESIRE to be buried in a simple and inexpensive manner in the churchyard at ——.

3. I GIVE to my wife, C.B., free of duty, absolutely, all my watches, jewels, ornaments of the person and wearing apparel, and wines, liquors, consumable stores and provisions.

4. I BEQUEATH to my trustees free of duty all my fixtures, (*o*), furniture [*continue as in Precedent II. to end of clause, omitting* "and wines, liquors, and consumable stores and provisions," *and inserting after* "and other effects" *the words* "not hereinbefore given to my wife absolutely"] UPON TRUST (1) to permit my wife to use and enjoy the said effects during her life, she keeping the same insured against fire [and burglary], and preserving the same from deterioration, reasonable wear and tear excepted (2) AND AFTER HER DEATH, my trustees shall deliver or divide the said effects unto or among such of my children as shall be living at the death of the survivor of me and my said wife and as [being male] attain the age of twenty-one years, [or being female attain that age] or marry under that age, and if more than one, in equal shares as nearly as may be according to their value, such value to be determined by my trustees, but so that such division shall not be questioned by reason of any alleged inequality in the value of the shares, but shall be absolutely binding and conclusive (*oo*). (3) PROVIDED that it shall not be necessary for my trustees to take an inventory of the said effects, and that they shall not be concerned to see to the insurance or preservation thereof, or be liable for any loss or damage that may happen thereto from any cause whatever [*or* (3) PROVIDED that (if my wife shall survive me) an inventory of the said effects (except such of them as from their trifling value or perishable nature or for any other reason my trustees may in their absolute discretion think it inexpedient to include in such inventory, all which excluded effects shall belong to my wife absolutely) shall be made as soon as conveniently may be after my death, and signed by my said wife, and such inventory shall be kept in the custody of my trustees, and they, after taking such inventory and procuring the same to be signed by my said wife, shall not afterwards during her life be in any way liable for or concerned to see to the custody, insurance, or preservation of the said effects or any of them] (4) I EMPOWER my trustees after the death of my said wife to provide for the

Instructions as to burial.

Jewellery and consumable stores to wife absolutely;

Furniture, &c., to trustees;

for testator's wife for life;

—after her death for division amongst testator's children living at the period of distribution.

No inventory.

[Inventory to be taken] (*p*).

Power to provide for preservation, &c., of articles appropriated to minor;

(*o*) Unless expressly mentioned, tenant's fixtures do not, as a rule, pass by a bequest of furniture, &c.: see *Re Seton-Smith*, [1902] 1 Ch. 717; *Re Chesterfield*, [1911] 1 Ch. 237.

(*oo*) As to the power of the Court to divide chattels, see p. 431.

(*p*) Instead of this provision, Form 3 in Part I. of the Statutory Will Forms, 1925 (set out at p. 607), may, if preferred, be incorporated.

custody, preservation and insurance (at the expense of my general estate) of such effects, as, on the division aforesaid, may have been appropriated as the presumptive share of any minor child, or to deliver to such child any of the effects so appropriated, but without incurring any responsibility for or in relation to the exercise of either of these powers. AND I ALSO EMPOWER my trustees to sell any effects so appropriated, investing the proceedings for the eventual benefit of the child or children who would otherwise have become entitled thereto.

—or to deliver the same.

Power to sell such appropriated articles.

5. I BEQUEATH to my trustees the sum of £—— free of duty UPON TRUST to invest the same in any investment hereby authorised, and to apply the income thereof during the period of twenty-one years from the death of the survivor of my wife and children in keeping in good repair [the graves of my parents and] my grave at ——, and at the expiration of such period I direct that the capital and income thereof shall fall into my residuary estate (*q*).

Legacy for repair of grave.

6. [*General devise and bequest of real and personal estate, on trust for sale, &c., with power to postpone, as in Precedent II.*]

Residuary estate on trust for sale, &c.

7. [*Trust to pay funeral expenses, &c., as in Precedent II.*].

8. [*Trust for investment, as in Precedent II. or III.*].

9. My trustees shall hold my residuary estate and the investments representing the same (herein called "the residuary fund") (1) UPON TRUST to pay the income thereof to my wife, during her life, [such income in the event of her remarriage to be for her separate use without power of anticipation] (2) AND AFTER her death as to both capital and income IN TRUST for such child or children of mine living at my death and such child or children then living of any child of mine then dead as [being male] attain the age of twenty-one years [or being female attain that age] or marry under that age, and if more than one in equal shares *per stirpes*, [so that the children if more than one of any child of mine who shall have died in my lifetime shall take equally between them the share which their parent would have taken, had he or she survived me, and attained a vested interest] (3) PROVIDED that my trustees may after the death of my wife, or in her lifetime with her consent in writing, raise any part

Trusts for wife for life;

—afterwards for children of testator, and children of any child predeceasing him (*r*).

Advancement clause.

(*q*) This gift, not being charitable, must be confined within the perpetuity limits. As to gifts for keeping graves in repair, see Tudor on Charities (1906), pp. 41, 54, 131; Jarman on Wills (1910), pp. 214, 221, 280; and *Re Davies*, [1915] 1 Ch. 543. Compare *Re Porter*, [1925] Ch. 746 (masonic temple in memory of son).

(*r*) As to this form of trust, see note (*m*) to Precedent II. And compare Precedent VI., where there is no preceding life interest, and the trust for investment is omitted.

PRECEDENT IV.

IN FAVOUR OF WIFE FOR LIFE, AND CHILDREN AND GRAND-CHILDREN.

or parts not exceeding altogether one half of the then expectant, presumptive, or vested share of any child or grandchild under the trusts hereinbefore declared, and pay or apply the same for his or her advancement or benefit; (4) AND IF there shall be no child of mine or child of a deceased child of mine, living at my death, who attains a vested interest in the residuary fund, then from and after the death of my said wife and such default or failure of children and grandchildren, my trustees shall hold the residuary fund, or so much thereof as shall not have become vested or been applied under the trusts or powers herein contained or by law implied. IN TRUST for [*ultimate beneficiary*].

Ultimate trust on failure of issue to attain a vested interest.

Option to son entitled to settled land to purchase adjacent land held on trust for sale.

10. I DECLARE that such one of my sons as shall first after my death become beneficially entitled in possession as tenant for life or in tail male to the —— estate under the Settlement [Trust Instrument] dated, &c., and made between [*parties*], and attain the age of twenty-one years, shall have the option, to be declared within twelve calendar months after he shall become so entitled or attain such age, which shall last happen, by a notice in writing to be given to my trustees, of purchasing the whole or any part of my freehold [*or* leasehold] hereditaments situate at, &c., hereinbefore devised in trust for sale, which may be adjacent or contiguous to or convenient to be held with the said —— estate, at a price to be agreed upon between him and my trustees, or if they are unable to agree, then at a valuation, such price with interest thereon at the rate of —— per cent. per annum from the day of my death or the day when such son shall attain the age of twenty-one years which shall last happen to be either paid by such son on the completion of the purchase or (if my said wife shall either have died previously to the exercise of such option or shall consent thereto in writing) to be brought into account by such son in the division of my residuary estate, and the lands and premises so purchased shall be conveyed at his expense to the son so purchasing the same, or as he shall direct, and the rents and profits thereof shall belong to such son from the day of my death or the day when such son shall attain the age of twenty-one years which shall last happen: PROVIDED that no purchaser of any part of my freehold [*or* leasehold] hereditaments under the said trust for sale shall be concerned to see or enquire whether such option to purchase as aforesaid shall have been exercised or be affected by notice that such option has been exercised or remain exerciseable (*s*).

(*s*) As to options to purchase, see L. P. Act, 1925, sects. 2 and 198, and L. C. Act, 1925, sect. 10, sub-sect. (1), Class C (iv). Notwithstanding the proviso at the end of the above clause, a purchaser with notice that the option had been exercised would not, it is thought, be protected.

11. [*Power to wife during her life to appoint new trustees.*] [*Other clauses as required, see Precedent III.*] IN WITNESS, &c. PRECEDENT IV.

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## V.

WILL *of* REAL *and* PERSONAL ESTATE. BEQUEST *of* LEASEHOLD HOUSE *to Wife*. PECUNIARY LEGACIES. SPECIFIC DEVISE *of a Freehold Farm, subject to a Mortgage*. RESIDUE *to one Son*. PRECEDENT V.

SPECIFIC AND PECUNIARY BEQUESTS, AND SPECIFIC DEVISE, AND GIVING RESIDUE TO SON.

I, A. B., of, &c. [*revoking prior Wills, &c., as in Precedent II.*].

1. I APPOINT my son, B. B., sole executor of this my Will. — Appointment of sole executor.

2. I GIVE to my wife, C. B., free of duty, my watches, jewels, trinkets, and personal ornaments [*or other specific chattels*] with the request (but not so as to impose any trust) that she will divide the same in accordance with any memorandum in my handwriting or signed by me (*t*). — Specific bequest and reference to memorandum.

3. I GIVE to my wife free of duty the sum of £——, to be paid to her as soon as may be after my death, and the further sum of £——, to be paid to her within three years after my death, with interest thereon at the rate of —— per cent. per annum from my death, to be paid by equal half-yearly payments, and the first half-yearly payment to be made at the end of six calendar months from my death. — Pecuniary legacies to wife;

4. I GIVE to my son E. B. and to each of my daughters F. B., G. B., and H. B., the sum of £—— free of duty. — —to children.

5. I GIVE to my wife free of duty my leasehold messuage, No. —— in —— Street, London, for the unexpired residue of the term created by the lease under which the premises are held, she paying the rent reserved by the said lease, and performing and observing the covenants by the lessee and conditions therein contained, and indemnifying my estate therefrom (*u*). — Leasehold house to wife.

6. I DEVISE to my son I. B., in fee simple, my freehold farm land and hereditaments situate in or near the Parish of ——, in — Specific devise to a son;

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(*t*) A reference to a memorandum, not executed as a will, has generally no testamentary operation, unless in existence at that date and so referred to as to form part of and be incorporated in the will, or unless before the death the donee has assented, so as to be bound as a trustee: see Jarman on Wills (1910), p. 134, &c., and *Re Gardner*, [1920] 2 Ch. 523; *Re Nicholls*, [1921] 2 Ch. 11; *Re Gardner*, [1923] 2 Ch. 230; *Re Falkiner*, [1924] 1 Ch. 88.

As to cost of packing and carriage of specific articles, see *Re Leach*, [1923] 1 Ch. 161.

(*u*) An assent in writing signed by the executor is necessary to pass the legal estate: see p. 42. For a form of assent, see p. 56.

Where the land given is registered, it may also conveniently be referred to by its registered number.

PRECEDENT V.

SPECIFIC AND PECUNIARY BEQUESTS, AND SPECIFIC DEVISE, AND GIVING RESIDUE TO SON.

the County of —— (*x*), Subject nevertheless in exoneration (*y*) of my personal estate to the payment of a principal sum of £——, now owing (or any other sum which at my death shall be owing) to X. Y. on the security thereof, and the interest for the same, [and subject to the payment of a proper rateable part of the estate duty payable under this my Will (*z*)].

subject to a mortgage;

—and to estate duty.

7. I DEVISE AND BEQUEATH all my real and personal estate (including property over which I have any general disposing power) not hereby or by any Codicil hereto otherwise specifically disposed of, to my said son B. B. absolutely for his own personal use and benefit, charged (but primarily on my personal estate) with the payment of my funeral and testamentary expenses and debts and pecuniary legacies, and the duty on all bequests made free of duty. IN WITNESS, &c. (*a*).

General residuary gift to the executor (son) beneficially.

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(*x*) See preceding note. For a form of assent, see p. 54.

(*y*) To avoid the numerous questions which have arisen on this point (see Jarman on Wills (1910), pp. 2047 *et seq.*), it is proper, in devising mortgaged lands, to state expressly whether the testator intends the mortgage debt to be charged thereon in exoneration of his personal estate or not. Under the Real Estate Charges Act, 1854, a devisee in a will made since 1854 took subject to any mortgage charged on the devised land, unless the testator signified a contrary intention. By the Real Estate Charges Act, 1867, as to the will of a testator dying after 1867, and by the Real Estate Charges Act, 1877, as to a testator or intestate dying after 1877, the provisions of the 1854 Act were amended and extended, and made to apply to a vendor's lien for unpaid purchase-money. See also *Re Hawkes*, [1912] 2 Ch. 251 (charge by testator in favour of a bank); *Re Williams*, [1915] 1 Ch. 450 (election); *Re Holt*, [1916] W. N. 249; 85 L. J. Ch. 779 (intestacy); *Re Beirnstein*, [1925] Ch. 12 (vendor's lien). The above Acts (which are repealed) are now replaced by sect. 35 of the A. E. Act, 1925.

(*z*) This may be added if in accordance with the intention; but it is unnecessary, because, although under the A. E. Act, 1925, sect. 1, real estate vests in the executor as if it were a chattel real, yet sect. 53, sub-sect. (3) of that Act preserves the incidence of taxation previously existing, and accordingly sect. 9 of the Finance Act, 1894, would apply: see *Re Sharman*, [1901] 2 Ch. 280; *Re Spencer Cooper*, [1908] 1 Ch. 130; *Re Palmer* (1912), 106 L. T. 319. See also *O'Grady* v. *Wilmot*, [1916] 2 A. C. 321, at p. 244: "If the property passed as real estate, it is conceded that it bears its own duty," *per* Buckmaster, L.C. As to what words may throw such duty on the residue, see *Re Nesfield*, [1914] W. N. 161; 110 L. T. 970; *Re Bath*, [1914] W. N. 188; 111 L. T. 153. See also Harman on Estate Duty (1921), pp. 134, &c.

(*a*) All the testator's children are here presumed to be adult.

## VI.

PRECEDENT VI.

IN FAVOUR OF SONS AND DAUGHTERS, WITH GIFT OF ANNUITY, AND SETTLEMENT OF DAUGHTER'S PORTION.

WILL *of a Widower.* REAL *and* PERSONAL *Estate.* BEQUEST *of pecuniary* LEGACIES, *and a* LIFE ANNUITY. SETTLEMENT *of a sum of Money on an* UNMARRIED DAUGHTER. BEQUEST *of a gross sum to a* MARRIED DAUGHTER. RESIDUE, *for* SONS *equally at* 21; *In default, for the two* DAUGHTERS *equally.*

I, A. B., of, &c. [*revoking prior Wills, &c.*].

1. [*Appointment of executors, &c., as in Precedent II.*].

2. [*Legacies to servants, as in Precedent III.*].

Gift of life annuity.

3. I GIVE to X. Y., during his life, an annuity of £—— [free of duty and income tax (but not super-tax)], payable by equal quarterly payments, the first such payment to be made at the end of three calendar months after my death (*b*).

Legacy to married daughter.

4. I GIVE to my daughter C. D., the wife of E. D., the sum of £—— (*c*) [with interest thereon at the rate of — per cent. per annum from my death], in addition to, and not in substitution for, the like sum of £——, covenanted to be paid to the trustees of her marriage settlement by me in my lifetime, or by my personal representatives within six calendar months after my death.

Bequest of money to trustees on trusts declared.

5. I BEQUEATH to my trustees free of duty [including duties payable on a subsequent devolution (*d*)] the sum of £—— [with interest thereon at the rate of —— per cent. per annum from my death] upon the trusts hereinafter declared concerning the same (*e*).

Residuary estate on trust for sale, &c.

6. [*General devise and bequest of real and personal estate on trust for sale, &c., with power to postpone, as in Precedent II.*]

7. [*Trust to pay funeral expenses, &c., as in Precedent II.*]

8. [*Trust for investment, as in Precedent II. or III.*]

Trusts of residue for sons.

9. (1) MY trustees shall hold my residuary estate and the investments representing the same (herein called "the residuary

(*b*) A weekly payment, if to extend beyond a year, may amount to an "annual payment" within Sched. D, Case III. 1 (a) of the Income Tax Act, 1918: *Smith* v. *Smith*, [1923] P. 191. As to adjustment of payments between annuitant and residuary legatees, see *Re Pettit*, [1922] 2 Ch. 765. An annuity given by will is not within the Income Tax Act, 1918, All Schedules Rules, rule 23, sub-rule (2). As to super-tax, see *Meeking* v. *I. R. Commissioners* (1920), 7 Tax Cases, 603; *Re Bates*, [1925] Ch. 157; *Re Bowen*, [1925] W. N. 206.

(*c*) As this sum is intended to fall within the terms of a covenant for the settlement of after-acquired property, it is bequeathed directly to the daughter. As to the power to exempt a gift from the operation of such a covenant, see SETTLEMENTS, Precedent II., p. 494, note (*y*).

(*d*) Or "**free of legacy and estate and succession duties**" if this is the intention: see General Remarks, above, p. 560.

(*e*) Even if the bequest was one of so much specified stock, it would still be a general, and not a specific, legacy, apart from other indication to the contrary: *Re Willcocks*, [1921] 2 Ch. 327.

PRECEDENT VI.

IN FAVOUR OF SONS AND DAUGHTERS, WITH GIFT OF ANNUITY, AND SETTLEMENT OF DAUGHTER'S PORTION.

fund") IN TRUST for such one or more of my sons as attain the age of twenty-one years, and if more than one in equal shares. (2) My trustees may raise any part or parts not exceeding altogether one-half of the then expectant or presumptive or vested share of any son of mine under the trust hereinbefore declared, and pay or apply the same for his advancement or benefit. (3) If no son of mine shall attain the age of twenty-one years, the residuary fund and the income thereof or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained or by law implied, shall after the failure of the trusts aforesaid, be held, (i) as to one equal moiety thereof, IN TRUST for my said daughter C. D., (ii) and as to the remaining equal moiety thereof, UPON THE TRUSTS hereinafter declared of the said sum of £—— (*f*).

Advancement.

If no son entitled, one-half for married daughter.

Other half on trusts of unmarried daughter's legacy.

Trusts of settled legacy;

10. My trustees may appropriate any investment existing at my death (whether or not an investment hereby authorised) the value of which at the time shall amount to the said sum of £——, or shall invest the said sum of £—— in or upon any investment hereby authorised for the investment of my residuary estate, with power to vary any investment, AND SHALL hold the said sum of £——, and the investments for the time being representing the same (herein called "the settled legacy"), (1) UPON TRUST to pay the income thereof to my daughter D. B., during her life, but without power of anticipation; (2) AND after her death, as to both capital and income, IN TRUST for all or any such one or more, exclusively of the other or others, of the issue of the said D. B., in such manner as the said D. B. shall at any time, whether covert or sole, by Deed or Will or Codicil appoint; (3) AND IN DEFAULT of and subject to any such appointment, IN TRUST for all or any the children or child of the said D. B., who [being male] attain the age of twenty-one years [or being female attain that age] or marry, and if more than one in equal shares; (4) PROVIDED that no child of the said D. B., who or whose issue shall take any part of the settled legacy, under any such appointment as aforesaid, shall, in default of appointment to the contrary, be entitled to any share of the unappointed part, without bringing the share appointed to him or her or to his or her issue into hotchpot; (5) PROVIDED ALSO that my trustees may, after the death of my said daughter D. B., or in her lifetime, with her consent in writing, raise any part or parts not exceeding altogether one-half of the then expectant, presumptive, or vested or appointed share of any child or other

—to invest;

—to pay income to daughter for life;

—in trust for her issue as she appoints.

In default for her children.

Hotchpot.

Advancement.

(*f*) The sum bequeathed in favour of the unmarried daughter.

issue of the said D. B. under the trusts hereinbefore declared, and apply the same for the advancement or benefit of such child or issue; (6) IF there shall be no child living at my death or born afterwards of my said daughter, D. B., who [being male] shall attain the age of twenty-one years [or being female shall attain that age] or marry, THEN, from and after the death of my said daughter D. B., and such default or failure of children as aforesaid, my trustees shall hold the settled legacy, and the income thereof, or so much thereof respectively as shall not have become vested, or been applied under any of the trusts and powers herein contained or by law implied, IN TRUST for such person or persons, and generally in such manner as my said daughter D. B. shall, whether covert or sole, by Deed, or Will or Codicil, appoint: AND IN DEFAULT of any such appointment, and so far as no such appointment shall extend, IN TRUST for my said daughter C. D. (*g*).

In default of children, in trust as daughter shall appoint, and in default for married daughter.

11. I EMPOWER my trustees, without the consent of any other person (*h*) to appropriate or purchase in their names a sum of £—— [*mention some Government Stock*], to answer the said annuity, which sum shall, subject to such annuity, be considered as part of my residuary personal estate [*or if more than one annuity is given the following clause may be inserted:* "To provide for the payment of the said annuities or any of them by appropriating for that purpose a fund (hereinafter called "the annuity fund") consisting of any investment authorised by law for the investment of trust money [hereby authorised for the investment of my residuary estate] or any investment existing at my death (whether so authorised or not), the annual income whereof at the time of appropriation shall be sufficient to answer any such annuity, with power in case the annual income of the annuity fund shall at any time prove insufficient, to resort to the capital thereof for payment of such annuity, and so that upon the death of any annuitant, a proportionate part, and on the death of all of them the whole or remainder of the capital of the annuity fund, shall revert to and form part of my residuary estate: AND until such appropriation I direct that the same shall be paid out of the income of my residuary [personal] estate [in exoneration of my real or chattel real estate]; but that after such appropriation the same shall cease

Power to appropriate fund for annuity.

(*g*) This gift over is to guard against lapse, as D. B.'s moiety of residue is to go on the same trusts. The rule that a share of residue does not, apart from express provision, accrue to the other shares, but goes to the next-of-kin, should always be borne in mind, where the gift is to persons by name: see *Re Powell*, [1918] 1 Ch. 407; *Re Wilkins*, [1920] 2 Ch. 63; *Re Whiston*, [1924] 1 Ch. 122.

(*h*) See A. E. Act, 1925, sect. 41.

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IN FAVOUR OF SONS AND DAUGHTERS.

to be charged upon, or payable out of, either the income or the capital of my residuary estate (*i*)].

12. I HEREBY NOMINATE my said daughter D. B. during her life, for the purpose of appointing new trustees of this my Will, or as separate trustees of the settled legacy (*k*).

New trustees.

13. I HEREBY APPOINT my said daughter C. D. and my said son-in-law E. D. guardians of my infant children. [*Trustee clauses, as in Precedent III.*] IN WITNESS, &c.

Appointment of guardians.

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## VII.

PRECEDENT VII.

GIVING CHARITABLE LEGACIES, PROVIDING ANNUITY FOR WIFE, AND SETTLING A SON'S PORTION.

DEVISE *of* REAL *and* PERSONAL *Estate.* CHARITABLE *and other* PECUNIARY *and* SPECIFIC *Legacies, with* PROVISIONS *relating to Legacies to Infants;* ANNUITY *to the Testator's Wife;* TRUSTS *for benefit of one* SON, *his Wife and Children;* RESIDUE *for the benefit of Testator's other children equally.*

I, A. B., of, &c. [*revoking prior Wills*].

1. [*Appointment of executors, &c., as in Precedent II.*]

2. I CONFIRM the settlement made in contemplation of my marriage with my wife M. B., and declare that the provisions hereby made for my said wife and my children shall be in addition to and not in satisfaction of those made or agreed to be made for them by such settlement (*l*).

Confirmation of testator's marriage settlement.

3. I GIVE to my wife free of duty the sum of £—— to be paid to her as soon as may be after my death.

Immediate legacy to wife.

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(*i*) If either of these clauses should be inserted, add after the clause for payment of debts and legacies : "And provide in manner hereinbefore directed for payment of the annuity [several annuities] hereinbefore bequeathed." The clause might be modified by omitting the power to resort to capital, and substituting a direction that in the case mentioned the annuities should abate proportionately, and omitting the subsequent mention of the part not resorted to for payment of the annuities. If preferred, instead of the above power of appropriation, Form 5 of Part I. of the Statutory Will Forms, 1925, may be incorporated : see Precedent XVII. As to the rights of annuitants generally with reference to the distribution of the residuary estate, see *Re Parry* (1889), 42 Ch. D. 570; *Harbin* v. *Masterman*, [1896] 1 Ch. 351; *Re Evans and Bettell*, [1910] 2 Ch. 438; *Re Rivers*, [1920] 1 Ch. 320; and as to realty charged, see *Re Earle* (1923), 131 L. T. 383; 68 Sol. J. 386. Where there is a bequest of a sum of money to buy an annuity, the annuitant is entitled to the money (Jarman (1910), p. 1145). So, also, where there is a direction to buy an annuity of a specified amount, the annuitant is generally entitled to the sum required to buy a Government annuity, unless the testator gives the trustees a discretion : *Ford* v. *Batley* (1854), 17 Beav. 303; *Re Castle*, [1914] W. N. 195; *Re Smith*, [1923] W. N. 92.

(*k*) As to appointing a separate set of trustees, see T. Act, 1925, sect. 37, sub-sect. (1) (b), set out at p. 31.

(*l*) Compare Form 1 of Part I. of the Statutory Will Forms, 1925, set out below at p. 606.

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4. I DEVISE my messuage, situate at ——, to my trustees upon trust (with the sanction of the High Court or of the Charity Commissioners) to allow the same to be used as a Reading Room for the inhabitants of the Parish of ——, upon such terms and subject to such regulations as my trustees shall think fit (*m*). Devise of house for charitable purpose.

5. I GIVE to my wife free of duty the silver tea and coffee service presented to me by ——. And I give all the rest of my plate and plated articles to my son C. B., also free of duty. Specific legacy.

6. I GIVE to the following charitable societies and institutions the sums hereinafter mentioned [free of duty], that is to say: To the —— Hospital, £——; to the —— Asylum, £——; to the —— Society, £——; and to the —— Institution, £—— (*n*). AND I DECLARE that the receipt of the treasurer or secretary or other proper officer of any such society or institution shall be a sufficient discharge for the same (*o*). Charitable legacies.

7. I ALSO GIVE to my wife free of duty an annuity of £——, during her life, payable quarterly, and the first quarterly payment thereof to be made at the end of three calendar months after my death. [*Here add power of appropriation for annuity, see Precedent VI.*]. Annuity to wife.

8. I GIVE the sum of £—— free of duty to each of my nephews and nieces next hereinafter named (that is to say) [*add names*]: PROVIDED that as to each such legatee who [being a nephew] shall be under the age of twenty-one years [or being a niece shall be under that age] and unmarried at my death, his or her legacy shall be invested by my trustees in or upon any investment hereinafter authorised for the investment of my residuary estate, and that upon the legatee attaining the age of twenty-one years, or [being a niece] marrying under that age, the investments representing his or her legacy and the income Legacies to nephews and nieces (*p*);

(*m*) The Mortmain, &c., Act, 1891, in effect removes the restrictions placed on charitable dispositions by will of realty and personal estate savouring of realty. Land may accordingly be now freely devised for charitable purposes, but, notwithstanding anything in the will, it must be sold within one year from the death of the testator (sect. 5), unless, where the land is required for actual occupation for the purposes of the charity, an order sanctioning its retention is made under sect. 8 by the High Court or the Charity Commissioners: see *Re Church Patronage Trust*, [1904] 2 Ch. 643; *Re Shum* (1904), 91 L. T. 192. Land held for charitable, &c., purposes is settled land: see S. L. Act, 1925, sect. 29. As to gifts for educational purposes, see Education Act, 1921, sect. 117.

(*n*) Great care should be taken in accurately describing the institution to be benefited: see, for example, *Re Wedgwood*, [1914] 2 Ch. 245; *National Society, &c.* v. *Scottish National Society, &c.*, [1915] A. C. 207; *Spencer* v. *National Association, &c.*, [1915] 1 Ch. 673.

(*o*) Compare Form 4 of Part I. of the Statutory Will Forms, 1925, set out at p. 608.

(*p*) See *Re Hall*, [1903] 2 Ch. 226; *Re Salaman*, [1907] 2 Ch. 46. As to receipts by married infants, see p. 487.

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GIVING CHARITABLE LEGACIES, PROVIDING ANNUITY FOR WIFE, AND SETTLING A SON'S PORTION.

of the same or so much thereof respectively as shall not have been applied under any power herein contained or by law implied, shall be transferred or paid to him or her; but if such legatee shall die under the age of twenty-one years and [being a niece] unmarried, the same shall sink into and become part of my residuary personal estate : PROVIDED ALSO that my trustees may at any time apply any part or parts or the whole of the legacy to which any such legatee shall be entitled in expectancy as aforesaid for his or her preferment, advancement, or benefit as they shall think fit (*q*).

—and for advancement.

Bequest of money to trustees upon trust.

9. I BEQUEATH to my trustees the sum of £—— with the interest thereon from my death at the rate of —— per cent. per annum until appropriation or investment, to be held upon the trusts hereinafter declared.

10. I DECLARE that the several bequests hereinbefore contained [other than gifts to charities] shall be free of duty (*r*).

Residuary estate on trust for sale, &c.

11. [*General devise and bequest of real and personal estate on trust for sale, &c., with power to postpone as in Precedent II.*]

12. [*Trust to pay funeral, &c., expenses.*]

13. [*Trust for investment, as in Precedent II. or III.*]

Residue in trust for testator's children (other than one son), with provision for child leaving issue (*s*).

14. MY trustees SHALL HOLD the said residuary money and the investments for the time being representing the same (herein called "the residuary fund") and the income thereof, IN TRUST for such of my children (other than and except my son D. B.) living at my death as [being male] attain the age of twenty-one years [or being female attain that age] or marry under that age, and if more than one in equal shares [PROVIDED that if any child of mine (other than my son D. B.) die in my lifetime leaving issue living at my death the interest which such child if surviving me would have taken shall devolve as if such child had died immediately after me] [*Advancement clause, as in Precedent II., omitting reference to wife*].

In default of children residue on trusts of sum appropriated for excluded son.

AND if there shall be no child of mine (other than my said son D. B.) living at my death, or having died in my lifetime leaving issue, who [being male] attains the age of twenty-one years [or being a female attains that age] or marries under that age, THEN the residuary fund and the income thereof, or so much thereof respec-

(*q*) Power to advance the whole is unusual, but may be advisable where the legacy is not of a large amount.

(*r*) If this general clause is inserted, the words "free of duty," where previously inserted, may, of course, be omitted.

(*s*) A gift by will to a class would carry the whole property to those only who survive the testator, though the class consists of the testator's children or other issue, as sect. 33 of the Wills Act, 1837, does not apply to a gift to a class, even though in the event the class consists of one individual : *Re Harvey*, [1893] 1 Ch. 567. For alternative clauses, see Precedent II. and notes thereto.

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tively as shall not have become vested or been applied under any of the trusts and powers herein contained or by law implied, shall be held, UPON THE TRUSTS hereinafter declared of the said sum of £—— [*sum settled on excluded son*].

15. My trustees shall (1) either appropriate some investment existing at my death (whether or not being an authorised investment) which at the time of such appropriation shall in the reasonable opinion of my trustees be equal in value to the said sum of £——; or (2) shall invest the said sum of £—— in any investment hereinbefore authorised for the investment of my residuary estate; (3) AND SHALL (*u*) PAY the income of the said sum of £——, and of the investments for the time being representing the same (herein called "the protected fund") unto my said son D. B. until he shall die, or become bankrupt, [or assign, charge, or incumber, or attempt (*x*) to assign, charge, or incumber, the same, or any part thereof], or do or suffer something whereby the same or some part thereof, would by operation of law or otherwise, if belonging absolutely to him, become vested in or payable to some other person or persons; (4) AND AFTER THE FAILURE or determination of the trust hereinbefore declared in favour of my said son D. B. in his lifetime, shall, during the remainder of his life, apply (*y*) so much of the said income as to my trustees shall seem proper, for the maintenance or benefit of the said D. B., and his wife and children, and other issue or any of them, or if there is no wife or issue, then of the said D. B. and the persons who would if he were dead be entitled to the

Sum to be appropriated or invested, and held on protective trusts (*t*).

Income to son till bankruptcy, &c.;

—then for him, his wife, and children.

(*t*) Compare the "protective trusts" in T. Act, 1925, sect. 33. If preferred, substitute for sub-clauses (3) and (4):

"AND SHALL hold the income on protective trusts within the meaning of sect. 33 of the Trustee Act, 1925, for the benefit of my said son D. B. during his life."

(*u*) The words: "If my said son D. B. shall not at my death be bankrupt [and shall not have assigned, charged, or incumbered, or attempted to assign, charge, or incumber the income hereinafter directed to be paid to him or some part thereof], or have done or suffered anything whereby the same or some part thereof would by operation of law or otherwise if belonging absolutely to him become vested in or payable to some other person or persons" may be inserted here, but are probably unnecessary, since the trust, though future in terms, has a retrospective operation: see *Re Evans*, [1920] 2 Ch. 304.

(*x*) See *Re Porter*, [1892] 3 Ch. 481; *Re Tancred*, [1903] 1 Ch. 715; *Re Jenkins*, [1915] 1 Ch. 46; *Re Marshall*, [1920] 1 Ch. 284; *Re Evans*, [1920] 2 Ch. 304; *Re Hamilton* (1921), 124 L. T. 737.

(*y*) See *Re Coleman* (1888), 39 Ch. D. 443.

PRECEDENT VII.

GIVING CHARITABLE LEGACIES, PROVIDING ANNUITY FOR WIFE, AND SETTLING A SON'S PORTION.

protected fund; (5) AND SHALL so long as the law will allow, accumulate the residue of such income by way of compound interest by investing the same, and the resulting income thereof in or upon any investment hereby authorised, and subject thereto shall pay and apply the surplus income of the protected fund [original] and accumulated investments as if the said D. B. were dead (*z*); (6) AND after the death of my said son D. B., shall hold the protected fund [the said sum of £—— and the said original] and accumulated investments, and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained or by law implied, IN TRUST for such children or child of the said D. B., as [being male] shall attain the age of twenty-one years [or being female shall attain that age] or marry under that age, and, if more than one, in equal shares; (7) AND if there shall be no child living at my death or born afterwards of the said D. B. who [being male] attains the age of twenty-one years [or being female attains that age] or marries under that age, then my trustees shall hold the protected fund [the said sum of £—— and the said original] and accumulated investments and the income thereof or so much thereof as shall not have become vested or been applied as aforesaid IN TRUST for —— absolutely. [*Trustee clauses, as in Precedent III.*]. IN WITNESS, &c.

Residue to be accumulated.

After death of son, fund in trust for his children.

In default of children over on ultimate trust.

## VIII.

PRECEDENT VIII.

GIVING POWER TO CARRY ON TESTATOR'S BUSINESS AND OPTIONS OF PURCHASE TO HIS SONS SUCCESSIVELY.

WILL *of a* TRADER *carrying on* BUSINESS ALONE *or in* PARTNERSHIP. POWER *to Trustees to* CONTINUE BUSINESS. OPTION *to Sons in succession to* PURCHASE BUSINESS. NOMINATION *of* SON *to interest in a Partnership.*

I, A. B., of, &c., now carrying on the business of a —— alone [in partnership] under the [firm] name of ——. [*Clause revoking prior Wills. Appointment of executors and trustees, as in Precedent III. Specific and general legacies as desired: see preceding Precedents. General devise and bequest upon trust for sale and conversion, and trusts of proceeds, including a gift*

(*z*) The Accumulations Act, 1800 (now repealed), prevented accumulation of income for any longer period than twenty-one years from the death of the testator. As to the destination of surplus income of the original funds and of subsequent income of the accumulated fund after the legal period has elapsed, see *Re Hawkins*, [1916] 2 Ch. 570; *Re Garside*, [1919] 1 Ch. 132 (following *Re Phillips* (1880), 49 L. T. 198, in preference to *Crawley* v. *Crawley* (1835), 7 Sim. 427. As to accumulations under a statutory power, see T. Act, 1925, sect. 31 (p. 407), and as to restrictions on accumulation of income, sects. 164-166 of the L. P. Act, 1925.

*of shares to testator's sons, and usual powers and provisions, as in Precedents II. and III.*]

PRECEDENT VIII.

GIVING POWER TO CARRY ON TESTATOR'S BUSINESS AND OPTIONS OF PURCHASE TO HIS SONS SUCCESSIVELY.

I authorise my trustees to carry on for such period as they shall think fit any business in which at my death I may be engaged, whether alone or in partnership, and for that purpose to retain and use therein the capital, or my share of the capital, employed therein at my death, and such additional capital as my trustees shall think fit to advance out of my residuary estate, with full power to act or join in acting in all matters relating to such business as if they were beneficially entitled thereto, or to my share and interest therein, and to delegate all or any of their powers in relation to such business to any person or persons whom they may think proper. [AND particularly with power (a) to become a limited partner under the Limited Partnerships Act, 1907; or (b) to convert or join in converting the business into a company limited by shares whether public or private, and to hold shares in any such company as an investment hereby authorised.] AND I declare that my trustees shall be entitled to full indemnity out of my estate for or in respect of any loss which may arise in connection with such business.

Power to continue business (*a*).

I hereby declare that such of my sons as shall at my death have attained the age of twenty-one years, and after my death each other son as and when he shall attain such age, shall have the option in succession according to seniority of purchasing any business which shall at my death be carried on by me alone at a price to be determined by valuation in such manner as my trustees shall think fit, subject to the conditions following. (1) The right to exercise such option shall not affect the absolute discretion of my trustees to exercise their trust for sale whenever they think fit, and whether or not all my sons shall have attained the age of twenty-one years, until such option shall have been actually exercised. (2) Such option shall be signified by my said sons respectively within such time as my trustees shall think fit to allow for that purpose, and in the event of the same being

Options to sons in succession to purchase business (*b*).

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(*a*) Executors carrying on a business are liable as joint debtors, but are not necessarily partners: *Re Fisher*, [1912] 2 K. B. 491. As to their right to indemnity out of their testator's estate, see *Dowse* v. *Gorton*, [1891] A. C. 190; *Hodges* v. *Hodges*, [1899] 1 Ir. R. 480; *Re Oxley*, [1914] 1 Ch. 605; *O'Neill* v. *McGrorty*, [1915] 1 Ir. R. 1. As to the importance of express powers for creating a limited partnership or converting the business into a limited company, see *Re Morrison*, [1901] 1 Ch. 701; *Re New*, [1901] 2 Ch. 534; *Re Smith, Smith* v. *Lewis*, [1902] 2 Ch. 667; *Re Anson*, [1907] 2 Ch. 424.

(*b*) This option is only applicable where the testator is carrying on the business alone. Each son is presumed to have a share in the residuary estate under the trusts before declared.

PRECEDENT VIII.

GIVING POWER TO CARRY ON TESTATOR'S BUSINESS AND OPTIONS OF PURCHASE TO HIS SONS SUCCESSIVELY.

exercised the said business shall be purchased as a going concern, and shall include not only the goodwill thereof but my capital therein and the stock-in-trade, machinery, plant, and effects of or belonging thereto, and the real or leasehold premises at or upon which the same shall be carried on or which shall be used in connection therewith, and the benefit of all contracts subsisting in relation thereto, and all book debts and money due to my estate in respect thereof, except money so due in respect of profits down to the completion of the purchase. (3) The price at which the said business shall be purchased by my said son so purchasing the same as aforesaid shall be brought into account against the value of his share in my estate, and in case such price shall exceed such value, my said son shall pay the amount of such excess either on the completion of the purchase or by instalments of such amounts and at such times as my trustees shall approve of to be secured with interest thereon at the rate of five per cent. per annum from the completion of the purchase by the bond or covenant of my said son or otherwise as my trustees shall direct. [(4) If such purchase shall be completed before the share of my said son in my estate shall have vested in possession, then in the meantime and until such share shall become vested in possession the entire price shall bear interest at the rate aforesaid, to be paid by my said son to my trustees and to be secured in manner hereinbefore mentioned (*c*).] AND I declare that my said son so purchasing the said business shall indemnify my general estate against all debts and liabilities due or subsisting in respect thereof. [*Alternative provision adapted to case where testator has under articles of partnership a right to nominate a successor to his interest in the partnership* :—" In exercise of the power contained in the Articles of Partnership dated the —— day of ——, 18—, of the firm of ——, in which I am a partner, and of all other powers, I hereby nominate my son —— to succeed to the share and interest of and in the said partnership business belonging to me at my death, and I bequeath unto my said son such share and interest accordingly, subject to his complying with the provisions in the said articles contained as to the admission of a new partner, and indemnifying my estate against all the debts and liabilities of the said firm. AND I declare that my said son shall be charged in the division of my estate with the value of my share and interest in the said business, to be ascertained by valuation in such manner as my trustees shall think fit. AND

Price to be brought into account in division of estate.

Nomination of successor to partnership share.

(*c*) This proviso will be proper where there is a previous life interest in the estate. As to interest on advanced shares, see *Re Dallmeyer*, [1896] 1 Ch. 372; *Re Cooke*, [1916] 1 Ch. 481.

that if the value of my said share and interest shall exceed the value of the share of my said son in my estate, my said son shall pay the amount of such excess to my trustees either in one sum or by such instalments and with such interest and security as shall be approved by my trustees."]

PRECEDENT VIII.

GIVING POWER TO CARRY ON TESTATOR'S BUSINESS AND OPTIONS OF PURCHASE TO HIS SONS SUCCESSIVELY.

Trustees may arrange as to business.

Subject and without prejudice to the powers and provisions hereinbefore contained, my trustees may make such arrangements as they shall think desirable for and in relation to the sale and realisation of any business in which at my death I may be engaged alone or in partnership, and may dispose of such business or of my share or interest therein upon such terms as to valuation, settlement of accounts, method of payment, and otherwise as they may think proper. AND I declare that no purchaser from my trustees shall be concerned to see or enquire whether the provisions hereinbefore contained in relation to the aforesaid options of purchase have been complied with, or be in any manner affected by any irregularity or want of compliance with such provisions. [*Other trustee clauses, as in Precedent III., so far as needed.*] IN WITNESS, &c.

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## IX.

PRECEDENT IX.

GIVING LEASEHOLD HOUSE IN TRUST FOR WIFE DURING WIDOWHOOD, AND RESIDUE IN TRUST FOR WIFE AND ISSUE WITHOUT CONVERSION (*d*).

WILL *of* REAL *and* PERSONAL ESTATE. BEQUEST *of* LEASEHOLD HOUSE *upon* TRUST *for the Testator's* WIFE *during* WIDOWHOOD, *with* POWERS *of* SALE *and of* LEASING. GENERAL *devise and bequest of* REAL *and* PERSONAL ESTATE WITHOUT CONVERSION *upon Trust for payment of the income of a* MOIETY *of the Estate to the Testator's* WIFE *during* WIDOWHOOD *and subject thereto for the Testator's* CHILDREN *and the* CHILDREN *of any* CHILD PRE-DECEASING *the Testator. Power of* MANAGEMENT; EXTENSION *of the powers of the* SETTLED LAND ACT, 1925; *General Power of* INVESTMENT; POWER *to* APPROPRIATE *parts of Estate* SPECIFICALLY *in satisfaction of* SHARES *of* RESIDUE.

I, A. B., of, &c. [*revoking prior Wills*].

1. [*Appointment of executors, &c., as in Precedent II.*]

Bequest of leasehold house in trust for wife during widowhood.

2. I BEQUEATH to my trustees, free of duty, my leasehold messuage situate at ——, (1) UPON TRUST to permit my wife (*e*)

(*d*) This Precedent is inserted because testators sometimes object to a trust for sale and conversion of the whole estate. But the ordinary form, accompanied, as it is, by a power to postpone conversion, is much more convenient and should be adopted, especially where the residue is to be held in undivided shares.

(*e*) It is assumed that the wife is one of the executors and trustees, and has already been named.

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to have the use or receive the rents and profits of the premises during her widowhood, she paying the rent reserved by the lease under which I hold the same, and performing and observing the covenants by the lessee and conditions therein contained, and indemnifying my other executors and trustees, and my estate in respect thereof (*f*); (2) AND after the death or remarriage of my wife, whichever event shall first happen, the premises shall fall into and form part of my residuary estate; (3) PROVIDED that, in the event of any sale thereof by my wife during widowhood under her statutory power, or thereafter by my trustees under their statutory or other powers, my trustees shall invest the net money to arise from such sale in any investment hereby authorised; with power to vary any investment; and shall pay the income of such investments to my wife during her widowhood; and after her death or remarriage the said investments shall fall into and form part of my residuary estate; (4) PROVIDED ALSO, that my wife, during her widowhood, in addition to her statutory power, may let the leasehold premises with the furniture in or upon the same, at an entire rent, and in that case may make or concur in such apportionment of the rent (if and when the same shall require to be apportioned) between the leasehold premises and the furniture as to her shall seem fit.

And after her death or marriage to fall into the residue.

Trusts of money to arise from sale.

Power of leasing with or without furniture.

3. [*Bequest of furniture, &c., to wife, as in Precedent II.*]

4. I DEVISE AND BEQUEATH all my real and personal estate not otherwise disposed of by this my Will or any Codicil hereto, unto my trustees, upon trust that my trustees shall out of my personal estate, or the proceeds of the sale, calling in and conversion thereof, or in case of the insufficiency thereof, by mortgage or sale of my real estate, or a competent part thereof, raise and pay my funeral and testamentary expenses [including the estate duty payable on my death in respect of my residuary real estate] and debts, including any mortgage debts or charges specifically charged on my real estate, or any part or parts thereof [which I direct to be paid out of my personal estate, as far as the same will extend, in exoneration of the real estate,

Devise and bequest of real and personal estate to trustees upon trust to pay funeral and testamentary expenses, &c.

(*f*) The wife would, under the previous law, by virtue of her interest during widowhood, have had the powers of a tenant for life under the S. L. Act, 1882: see *Re Pollock*, [1906] 1 Ch. 146; *Re Martin*, [1919] 1 Ir. R. 71. So now, under the S. L. Act, 1925, she has during widowhood the powers of a tenant for life, and is therefore "tenant for life" (sect. 117, sub-sect. (1) (xxviii)) of the leasehold house. The executors will, subject to their rights for purposes of administration, by conveyance or assent vest the property in the widow for the residue of the term upon the trusts of the will (sects. 6, 8). As to the nature of the wife's liability under the lease, see *Re Loom*, [1910] 2 Ch. 230. The residuary real estate would be vested in the trustees: see S. L. Act, 1925, sect. 36 (p. 428).

charged therewith], and the pecuniary legacies bequeathed by this my Will or any Codicil hereto, and the duty on all legacies bequeathed free of duty : PROVIDED that no purchaser or mortgagee shall be bound to inquire as to the insufficiency of my personal estate or to see to the application of the money.

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5. My trustees shall pay the income of one equal moiety of my residuary real and personal estate (*g*) to my wife during widowhood, and subject thereto shall hold the same and the income thereof, IN TRUST for [*testator's children and grandchildren, as in Precedent IV.*].

Income of moiety to wife during widowhood and subject thereto the whole for testator's children, &c.

6. My trustees may raise by sale or mortgage of any part of my residuary estate or otherwise, any part not exceeding altogether a moiety of the value (to be determined for that purpose in such manner as my trustees shall in their discretion think fit) of the expectant or vested share of any child or grandchild of mine in my residuary estate under the trusts aforesaid, and may apply the same for his or her advancement or benefit as my trustees shall think fit; But no purchaser or mortgagee shall be concerned to inquire as to the propriety of raising any money for the purpose of such advancement, or the amount which ought to be raised, or to see to the application thereof; And so that any sums raised for the purpose aforesaid during the widowhood of my said wife shall, as between her and the other persons beneficially interested in my estate, be considered as raised out of the moiety of my estate the income whereof is not receivable by my said wife.

Power to raise money for advancement.

7. If there shall be no child or grandchild of mine who shall attain a vested interest in the said trust premises under the trusts hereinbefore declared, then, subject and without prejudice to the trusts and powers herein contained or by law implied, my trustees shall hold my residuary estate, and the income thereof, IN TRUST for, &c. (*h*).

Ultimate trust on failure of issue to attain a vested interest.

8. The whole of the income arising from any part of my residuary estate of whatsoever description shall, as well during the first year from my death as at all times afterwards, be applicable as income under the trusts of this my Will, no part thereof being in any event liable to be retained as corpus or capital.

Income of all property to be applied as income (*i*).

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(*g*) This is better than giving half the income of the residue, as in that case there would be a difficulty in paying over the vested share of a child in one-half of the capital until after the death or remarriage of the widow : see *Macculloch* v. *Anderson*, [1904] A. C. 55; *Re Faux* (1915), 59 Sol. J. 457.

(*h*) This clause should be omitted where the state of the testator's family renders it unnecessary.

(*i*) Compare clause 16 in Precedent III.

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9. During the widowhood of my wife, and also, after her death or remarriage, during the minority of any child or grandchild of mine who shall be interested under the trusts hereinbefore contained, my trustees shall retain possession or receive the rents and profits of my residuary real and leasehold property, and pay all outgoings and expenses which may be payable, or which they may think fit to pay in respect thereof, and may in addition to their statutory powers manage the same premises, and by mortgage or otherwise make any outlay for the benefit or in respect of my real and personal estate, in the same manner in all respects as if they were absolute (and not merely fiduciary) owners thereof, without being answerable for any loss occasioned thereby; and for any of the purposes aforesaid, may employ such agent or agents at such salary or remuneration as may be thought fit.

Powers of management during wife's widowhood, &c.

10. My trustees shall be the trustees for the purposes of the Settled Land Act, 1925, of the settlement created by this my Will.

Appointment of trustees for purposes of the S. L. Act.

11. All money forming part of my estate, or otherwise coming to the hands of my trustees under any of the trusts or powers of this my Will and requiring investment, may be invested by my trustees at their discretion [*investment clause, as in Precedent II. or III., adding*, "or in any other investment in which under the Settled Land Act, 1925, or any amending Act capital money may be invested"], with power to vary any investment.

General power of investment.

12. Notwithstanding anything hereinbefore contained, my trustees may at any time, with the consent in writing [of my wife during her widowhood, and (*k*)] of the majority in number of such of my children and grandchildren for the time being entitled to, or interested in possession or expectancy in, my residuary estate as aforesaid as shall at the time be of full age, specifically appropriate or allot any part or parts of my estate (real or personal) in the actual condition or state of investment thereof for the time being in or towards satisfaction of the share or shares of any of my said children or grandchildren in my said residuary real or personal estate, and may determine or assume, in such manner and upon such grounds as my trustees shall in their absolute discretion think fit, the value for such appropriation or allotment of every or any part or parts of my said real and personal estate, and any such appropriation or allotment shall take effect from such time or times, and be

Power of appropriation of specific parts of the estate in satisfaction of shares of residue.

(*k*) The words in brackets appear to be superfluous if, as here, the wife herself is one of the trustees.

made for or in respect of such sum and in other respects in such manner as my trustees shall think reasonable and proper. And any such appropriation or allotment may be made upon the terms of such sum or sums of money as my trustees may think fit, being by or on the part of any of the persons interested under this my Will paid for equality; And every such appropriation or allotment shall, subject to such consent or consents as hereinbefore prescribed being obtained thereto, be absolutely binding upon all persons interested under this my Will. And any property so appropriated or allotted, and the proceeds thereof, if sold, and any sum allotted for equality as aforesaid and the investments representing the same respectively, shall, until some person or persons shall become absolutely entitled thereto in possession under the trusts of this my Will, be and remain subject (according to the nature thereof, and so far as circumstances may require or admit) to the powers and trusts for management and incidental or subsidiary powers and provisions hereinbefore contained, in the same manner as if such appropriation or allotment had not taken place, and subject thereto, such property shall be held upon the like trusts, and with and subject to the like powers and provisions, as the share in or towards satisfaction whereof the same shall have been appropriated or allotted. And I declare that the above power of appropriation is in substitution for that conferred by sect. 41 of the A. E. Act, 1925. [*Other trustee clauses, as in Precedent III.*] In witness, &c.

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Power to provide for payments for equality of allotment.

Declaration as to trusts of allotted properties.

## X.

### Will *of a* Married Woman *exercising a* General Power *of Appointment under her Marriage Settlement* (*l*).

PRECEDENT X.

OF MARRIED WOMAN UNDER POWER.

I, A. B., of, &c. [*revoking prior Wills, as in Precedent II.*]

1. I appoint L. M., of, &c., and N. O., of, &c. [*existing trustees of marriage settlement*] to be the executors of this my Will.

(*l*) With respect to the exercise of powers by married women, see Sugd. Pow., 8th ed., ch. v., sect. 1, and Farwell on Powers (1916), pp. 133, &c. Where the power was exerciseable "during coverture," it was held to be exercised by a will made during coverture, although the testatrix died discovert: see *Re Safford*, [1915] 2 Ch. 211. The express exercise of a special power followed by a general residuary gift not expressly referring to a general power does not necessarily indicate a "contrary intention" within sect. 27 of the Wills Act, 1837: *Re Stokes*, [1922] 2 Ch. 406.

PRECEDENT X.

OF MARRIED WOMAN UNDER POWER.

Reference to power in settlement.

2. IN EXERCISE of the power conferred on me by my Marriage Settlement (herein called "the settlement"), dated the —— day of ——, and made betweeen C. B. (herein called "my husband"), of the first part, myself of the second part, and the said L. M. and N. O. of the third part, whereby it was declared that, if there should be no child of the then intended marriage who being a son should attain the age of twenty-one years, or being a daughter should attain that age or marry, the trustees should hold the fund comprised in the settlement (herein called "the trust fund"), and the income thereof, in trust for such persons and purposes, and in such manner, as I should, when discovert, by deed, or whether covert or discovert, by Will or Codicil appoint, I HEREBY APPOINT that, if no child of my said marriage, being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, the trustees or trustee for the time being of the settlement, shall after the death of my husband, and such default or failure of children as aforesaid, out of the trust fund, and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers in the settlement contained or by law implied, raise and pay to —— the sum of £——, and to —— the sum of £——, and as regards each such sum, free of all duty, it being my intention that all such duty shall be borne and paid out of the residue of the trust fund, AND SHALL pay and transfer the residue of the trust fund, and of the income thereof (including in such residue such of the said appointed sums of £—— and £——, as may fail by lapse or otherwise), unto —— and —— in equal shares.

Appointment.

General devise and bequest to husband.

3. As to all other the estate and effects real and personal to which I shall be entitled for my separate use or over which I shall have any power of appointment or disposition at my death (including any part of the trust fund, the trusts whereof shall fail by lapse or otherwise (*m*)), I DEVISE, BEQUEATH and APPOINT the same unto my husband absolutely. IN WITNESS &c. (*n*).

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(*m*) See *Re Skinner*, [1924] W. N. 65; Farwell on Powers (1916), p. 268.

(*n*) This will must be executed in the manner prescribed by the Wills Act, 1837, and such execution will be sufficient, whatever formalities may have been required by the deed creating the power; and where the instrument is executed by a British subject domiciled abroad, without the formalities required by English law, but in accordance with those of the country of domicil, the appointment will be treated in English Courts as valid: see Wills Act, 1837, sects. 9, 10, 27; Wills Act, 1861, sect. 1; and *Re Simpson*, [1916] 1 Ch. 502; *Re Wilkinson*, [1917] 1 Ch. 620; *Re Lewal*, [1918] 2 Ch. 391.

## XI.

CODICIL *appointing a* NEW TRUSTEE *and* EXECUTOR.

PRECEDENT XI. — CODICIL APPOINTING TRUSTEE AND EXECUTOR.

I, A. B., of, &c., DECLARE this to be a CODICIL to my Will, dated the —— day of —— 19—. WHEREAS E. F., in my Will named, has lately died, NOW I HEREBY APPOINT L. M., of, &c., to be a trustee and executor of my Will [and a guardian of my infant children] in the place of the said E. F.; and I declare that my Will shall accordingly be read and construed as if the name of the said L. M. had been inserted therein throughout, instead of the name of the said E. F. (*o*); and in all other respects I confirm my Will (*p*). IN WITNESS, &c.

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## XII.

CODICIL *altering the amount of a* LEGACY.

PRECEDENT XII. — CODICIL ALTERING AMOUNT OF LEGACY.

I, A. B., of, &c., DECLARE this to be a CODICIL to my Will, dated the —— day of ——, 19—. WHEREAS by my Will I have bequeathed to my son C. B. the sum of £——: AND WHEREAS, since the date and execution of my Will, I have at various times advanced and paid to my said son C. B. several sums of money, amounting in the aggregate to the sum of £——, for the purpose of enabling him to establish himself as a ——. Now I HEREBY DECLARE that the said aggregate sum of £—— shall be taken to have been and to be in part payment of the said legacy of £——, and that the said legacy of £—— shall, to the extent of the said sum of £—— so advanced as aforesaid, but not further or otherwise, be considered to have been adeemed. AND in all other respects I confirm my Will (*q*). IN WITNESS, &c.

Recital of advance to legatee.

Revocation of legacy to extent of advance.

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(*o*) See *Re Freeman*, [1910] 1 Ch. 681. where a legacy and share of residue were given to an executor by the will, and the gift of the share of residue was held not to be revoked by a codicil substituting another executor, revoking the legacy, and containing a general declaration of this nature. See also *Re Mellor*, [1912] W. N. 172; 56 Sol. J. 596; 28 T. L. R. 473; *Re Russell* (1912), 56 Sol. J. 651.

(*p*) The effect of these words is to republish the will, so as to bring down the date of it to the date of the codicil: see *Re Wedgwood*, [1914] 2 Ch. 245, 250. The result is the same, even without any words of confirmation, where the codicil contains the usual introductory reference to the will: see Jarman (1910), p. 198. In the case of a second or subsequent codicil say:

"I confirm my Will and the First [and Second] Codicil[s] thereto except so far as the same are revoked or varied by this present Codicil." See pp. 559, 560.

(*q*) See note (*p*) to previous Precedent.

## XIII.

PRECEDENT XIII.

FREEHOLDS IN STRICT SETTLEMENT.

### DEVISE *of* FREEHOLDS *in* STRICT SETTLEMENT (*r*).

I, A. B., of, &c. [*revoking prior Wills, &c., as in Precedent II.*]

1. I APPOINT X., of, &c., Y., of, &c., and Z., of, &c., executors and trustees of this my Will and also trustees for the purposes of the Settled Land Act, 1925, of the settlement hereby created (herein called "my trustees," which expression includes the trustees or trustee for the time being hereof).

Strict settlement on the testator's son's and brother's existing and after-born issue.

2. I DEVISE all my freehold hereditaments (except what I otherwise dispose of by this my Will) to my son, D. B., in fee simple Upon the trusts and subject to the powers and provisions following, that is to say: Upon trust for the said D. B. during his life without impeachment of waste; and after his death, Upon trust for each of the sons of the said D. B. born during my life successively, according to seniority, for the life of such son, without impeachment of waste; WITH REMAINDER immediately after the death of each such son (*s*), Upon trust for his first and other sons successively, according to seniority, in tail male; AND AFTER the failure or determination of the trusts and interests hereinbefore limited, Upon trust for each son of the said D. B. born after my death successively, according to seniority, in tail male; AND IN DEFAULT of such issue, Upon trust for each of my sons hereafter to be born, successively, according to seniority, during his life without impeachment of waste; WITH REMAINDER, immediately after the death of each such son, Upon trust for his first and other sons successively, according to seniority in tail male; AND AFTER the failure or determination of the trusts and interests hereinbefore limited, Upon trust for my brother E. B., during his life, without impeachment of waste; AND AFTER his death Upon trust for, &c. [*limitation in favour of the sons of E. B. similar to those above in favour of the sons of D. B., and making each son born in the testator's lifetime a tenant for life only* (*t*)]; AND IN DEFAULT of such issue, Upon trust for my own

(*r*) This Precedent is not given as an example of a complete will, but as an example of a devise in strict settlement, without the usual accompanying provisions and powers.

(*s*) It is important to show that the tenants for life are to take successively and not concurrently: see *Re Harcourt*, [1920] 1 Ch. 492.

(*t*) These limitations are framed so as (in effect) to make each devisee who may come into existence during the testator's lifetime take for life only, it being assumed that the testator has only one son living at the date of his will, and that an after-born son of the testator will not have a son in the testator's lifetime. Where such limitations are carried on through a long string of devisees, their form may be conveniently shortened, by limiting estates for

right heirs. PROVIDED that no person, who shall be *en ventre sa mère* at my death, shall, for the purpose of the limitations hereinbefore contained, be considered as born in my lifetime (*u*).

3. EVERY person hereby made tenant for life of the premises may, either before or after he shall be entitled to the possession or to the receipt of the rents and profits thereof (but subject to the estates or interests preceding his own interest, and to the powers annexed to such preceding estates or interests, and to the estates or interests which may have been limited in exercise of such powers), by deed or will or codicil appoint to any woman whom he may marry or have married, for her life, or any less period by way of jointure, any yearly rentcharge or rentcharges commencing from or at any time after the death of the appointor and not exceeding in the whole, for any one woman, the sum of £——, to be charged upon and payable out of all or any of the premises (*x*); AND the said power of jointuring may be exercised as often as any person for the time being entitled to exercise the same shall marry, but so nevertheless that the premises shall not in any circumstances be liable by virtue of charges created by one and the same person to the payment at one and the same time of any sum or sums exceeding the yearly sum of £——. PROVIDED NEVERTHELESS, that no rentcharge shall become a lien upon any of the premises, or be payable, unless the person appointing the same shall be or become entitled to the possession or to the receipt of the rents and profits of the premises, or some issue of such person shall, or would if of full age, become so entitled, or before the time when such person shall

Power of jointuring as often as donee may marry.

No jointure to become a lien unless the person limiting the same, or some of his issue, become entitled in possession.

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life to each person in being at the date of the will, with remainder to his sons successively in tail male (as in the limitations in the text to the testator's after-born sons), and adding the following proviso after the first limitation :

"PROVIDED that every person actually born in my lifetime (but not any person *en ventre sa mère* at my death), who under the limitations hereinbefore contained would (but for this present proviso) be entitled by purchase to an interest in tail male in the premises, shall, in the place in which he would be so entitled as aforesaid, take therein, instead of such interest in tail male, an interest for his life only, without impeachment of waste, with remainder, immediately after his death, upon trust for his first and other sons successively according to seniority in tail male."

Proviso cutting down entailed interests to life interests.

(*u*) See note (*b*) to next Precedent.

(*x*) Such a rentcharge when limited will give the person entitled thereto the powers conferred by sect. 121 of the L. P. Act, 1925, but the term created will be equitable only. To prevent doubt, the words "by way of jointure" should be inserted : see *Re De Hoghton*, [1896] 2 Ch. 385. The possibility that a future wife may be unborn at the date of the testator's death does not affect the validity of her jointure : see *Re Gardner*, [1916] 2 Ch. 413.

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become, or when some issue of such person shall become, or, if of full age, would have become so entitled : AND ALSO, that the premises shall not at any one time be subject to the payment of rentcharges exceeding in the whole the sum of £——, and that such rentcharges shall have priority of payment according to the priority in order of limitation of the respective interests of the several persons exercising the said power.

The land not to be subject at once to more than a limited amount.

4. EVERY person hereby made tenant for life of the premises may, either before or after he shall be entitled to the possession or to the receipt of the rents and profits thereof (but subject to the estates or interests preceding his own interest therein, and to the powers annexed to such preceding estates or interests and to the estates or interests which may have been limited in exercise of such powers), by deed or will or codicil, charge all or any of the premises with the payment, for the portion or portions of his child, or all or any of his children (other than an eldest or only son, or any other son for the time being entitled under the limitations hereinbefore contained to the first interest for life or in tail male, either in possession or in remainder expectant on the life estate of the person exercising this power), of any sum or sums not exceeding in the different events hereinafter specified the respective sums following : (1) IF there shall be but one such child (other than as aforesaid), the sum of £——; (2) IF there shall be but two such children (other than as aforesaid), the sum of £——; (3) IF there shall be three or more such children (other than as aforesaid), the sum of £——; to be an interest or interests vested in and to be paid to such child, or among such children, or any one or more of them, at such times, if more than one, in such shares, and to be subject to such powers of appointment by the person exercising this power, or any other person or persons, and to such powers of advancement exercisable at the discretion of the donees or donee or otherwise, and to such other powers and provisions of any description for the benefit of such child or children or any of them, as the person exercising this power shall direct; AND MAY, by deed, or will, or codicil (but subject as aforesaid), charge the premises charged with such portion or portions respectively, with the payment of such clear annual sum or sums not exceeding the interest of the portion or portions after the rate of —— per cent. per annum, to be raised and applied for the maintenance or education of the child or children for whom such portion or portions shall be intended, until such portion or portions shall become payable, at such times, if more than one in such shares, and generally in such manner in every respect as the person exercising this power shall direct : AND MAY, to provide for the raising and payment of

Power to charge portions for younger children;

—varying according to the number of children;

—and with annual sums, by way of interest for maintenance;

such portion or portions and annual sum or sums, by deed, or will, or codicil (but subject as aforesaid), appoint the premises charged therewith to any person or persons for any term or terms of years, with or without impeachment of waste, upon usual trusts for securing payment of the same. PROVIDED that no portion or annual sum shall become a lien upon all or any part of the premises, or be payable, unless the person appointing the same shall be or become entitled to the possession or to the receipt of the rents and profits of the premises, or some issue of such person shall, or would, if of full age, become so entitled, or before the time when such person shall become, or some issue of such person shall become, or, if of full age, would have become so entitled : AND ALSO, that the premises shall not, under the power of charging portions hereinbefore contained, become ultimately subject to the payment of any greater sum in the whole for portions than the sum of £——, and that such portions respectively shall have priority of payment according to the priority in order of limitation of the respective estates or interests of the several persons exercising the said power (*y*). IN WITNESS, &c.

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—and to limit terms of years for raising the same.

No portion to become a lien unless the person charging the same, or some of his issue, become entitled in possession.

The land not to be subject to more than a specified sum.

## XIV.

WILL *devising* FREEHOLDS *and* LEASEHOLDS *upon trust to pay* RENTCHARGE *to* TESTATOR'S WIFE *during her life, and subject thereto for Testator's* SONS *and* DAUGHTERS *and their issue in Strict Settlement.* POWERS *of* JOINTURING *and charging* PORTIONS. BEQUEST *of* HEIRLOOMS *and* RESIDUARY PERSONAL ESTATE *on corresponding trusts* (*z*).

PRECEDENT XIV.

REAL AND PERSONAL ESTATE IN STRICT SETTLEMENT.

I, A. B., of, &c. [*revoking prior Wills, &c., as in Precedent II.*].

1. [*Appointment of executors and trustees, &c., as in preceding Precedent*].

2. I DEVISE AND BEQUEATH all the freehold and leasehold messuages, land, tenements, and hereditaments, of or to or over which I shall at my death be seised, or entitled, or have any

General devise of freeholds and leaseholds.

(*y*) As to the powers of management during any minority, see S. L. Act, 1925, sect. 102. If other additional or more extensive powers than those conferred by the Act generally are required, they should be added here. Also add, if desired, a power for any one or more of the tenants for life to appoint new trustees and other trustee clauses.

(*z*) This Precedent is given as a specimen of a complete will making a strict settlement of the whole estate (excepting specific gifts) on the testator's wife and issue, and should be compared with the preceding Precedent, and with the forms of settlements of land under SETTLEMENTS and notes thereto.

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general power of disposition by Will (except what I otherwise specifically dispose of by [this my Will or] any Codicil hereto). As to the freeholds TO my eldest son D. B. in fee simple UPON the trusts and subject to the powers and provisions hereinafter declared, AND AS to the leaseholds TO the said D. B. for all such estate, term and interests as I shall have therein at my death, UPON TRUST out of the rents and profits thereof to pay the rents and annual sums reserved by the several leases and to perform and observe the covenants by the lessees and conditions therein respectively contained. AND subject thereto UPON the trusts and subject to the powers and provisions hereinafter declared. AND I DECLARE that the said freeholds and leaseholds shall be held

On trust that testator's wife may receive a rentcharge.

UPON TRUST that my wife C. B. may, during her life, receive the yearly rentcharge of £——, to be [without power of anticipation whilst she shall be under coverture, and to be] charged upon the premises, and to be payable by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first half-yearly payment to be made on such of the said days of payment as shall happen next after my death, if my wife shall then be living (*a*); AND subject and charged as hereinbefore mentioned, UPON TRUST for the said D. B. during his life without impeachment of waste; And after his death UPON trust for his first and other sons successively according to seniority in tail male, WITH REMAINDER to his first and other sons successively according to seniority in tail, WITH REMAINDER to his first and other daughters successively according to seniority in tail, WITH REMAINDER Upon trust that my second son E. B. and every other son of mine hereafter to be born, and their respective sons and daughters, shall successively take interests similar to and in the same order and with the same priority as those hereinbefore limited to my said son D. B. and his sons and daughters, but so that the elder of such sons of mine and his sons and daughters shall always be preferred to the younger of such sons of mine and his sons and daughters in the same manner in all respects as if the limitations hereinbefore contained to or in favour of the said D. B. and his sons and daughters were repeated with the substitution of the name of each of my said sons in succession according to seniority for the name of the said D. B., WITH REMAINDER Upon trust that all my daughters and their respective sons and daughters shall successively take interests similar to and in the same order and with the same priority as those hereinbefore limited to my sons and their respective sons and daughters, but so

Subject thereto on trust for testator's sons and daughters and their issue in settlement.

Remainder to testator's daughters in settlement.

(*a*) As to remedies for recovery of this rentcharge, see L. P. Act, 1925, sect. 121.

that the elder of such daughters of mine and her sons and daughters shall always be preferred to the younger of such daughters of mine and her sons and daughters in the same manner in all respects as if the limitations hereinbefore contained to or in favour of my sons and their respective sons and daughters were repeated with the substitution of the name of each of my daughters in succession according to seniority for the names of my sons respectively, WITH REMAINDER to my own right heirs : PROVIDED that if any person to whom I have given an interest in tail male by purchase, and also an interest in tail by purchase in the premises is born in my lifetime, such respective interests in tail male and in tail shall not take effect; And instead of such interest in tail male I declare that the premises shall be held UPON trust for such person during his life without impeachment of waste, WITH REMAINDER to his first and other sons successively according to seniority in tail male; And in lieu of such interest in tail, that the premises shall be held UPON trust for the first and other sons of such person successively according to seniority in tail, WITH REMAINDER to his first and other daughters successively according to seniority in tail. AND ALSO that if any person to whom I have given an interest in tail by purchase only in the premises is born in my lifetime, such interest in tail shall not take effect; And instead thereof that the premises shall be held UPON trust for such person during her life without impeachment of waste, WITH REMAINDER to her first and other sons successively according to seniority in tail, WITH REMAINDER to her first and other daughters successively according to seniority in tail : [PROVIDED that no person who shall be *en ventre sa mère* at my death shall for the purpose of the provision lastly hereinbefore contained be considered as born in my lifetime (*b*)].

Remainder to testator's right heirs.

Proviso cutting down entailed interest to life interest.

3. Every person hereby made tenant for life of the said premises may either before or after he or she shall be entitled to the possession or receipt of the rents and profits thereof (but subject and without prejudice to the estate or interests preceding his or her own interest, and to the powers annexed to such preceding estates or interests and to the estates or interests which may have been limited in exercise of such powers), appoint to any person whom he or she may marry or have married for the life of such person or any less period, any yearly rentcharge or rentcharges [commencing from or at any time after the death

Power of charging jointures.

(*b*) The words within brackets follow the rule of construction in *Villar* v. *Gilbey*, [1907] A. C. 139, but for some purposes such a child is considered as "born" : see *Re Wilmer*, [1903] 2 Ch. 411 (rule of perpetuities); *Re Griffiths*, [1911] 1 Ch. 246 (Wills Act, 1837, sect. 33).

PRECEDENT XIV.

REAL AND PERSONAL ESTATE IN STRICT SETTLEMENT.

of the appointor], not exceeding in the whole for any one such appointee during the life of the said C. B., the sum of £——, and after her death the sum of £——, to be charged upon and payable out of all or any of the premises. [*Continue ancillary clauses as in Precedent XIII., and insert after the words* "not exceeding in the whole" *the words* "together with the rent-charge hereby limited to the said C. B."]

Power of charging portions.

4. Every person hereby made tenant for life of the premises may either before or after he or she shall be entitled to the possession or to the receipt of the rents and profits thereof (but subject to the estates or interests preceding his or her own interest therein, and to the powers annexed to such preceding estates or interests and to the estates or interests which may have been directed in exercise of such powers), by Deed or Will or Codicil charge all or any of the premises with the payment for the portion or portions of his or her child or all or any of his or her children (other than an eldest or only son entitled, or a daughter indefeasibly entitled under the limitations hereinbefore contained to the first interest for life or in tail male or in tail respectively [*continue power to charge portions, and ancillary clauses, as in Precedent XIII.*]), UPON the same trusts and subject to the same powers and provisions, or such as shall as nearly as may be correspond with the trusts, powers and provisions declared concerning my settled freeholds, but not so as to increase or multiply charges or powers of charging.

Bequests of chattels as heirlooms, on corresponding trusts.

5. I BEQUEATH to my trustees [free of duty] all the plate, furniture, linen, china, glass, and articles of household use and ornament, pictures, prints, busts, statues, bronzes, marbles, vases, antiquities, works of art, curios, scientific collections, books, and manuscripts, which shall be in, or about, or belonging to my mansion-house, called —— House, at the time of my death, whether temporarily stored elsewhere or not (*c*) (except such articles as from their trifling value or perishable nature or any other reason my trustees shall in their absolute discretion consider unsuitable to be kept as heirlooms), all which articles (except as aforesaid) are herein called "the heirlooms," UPON TRUST to allow the heirlooms to devolve as heirlooms, and to hold the same UPON the same trusts and subject to the same powers and provisions, or such as shall correspond (as nearly as may be) with the limitations of the freehold and leasehold land hereby settled (*d*); AND I HEREBY DIRECT that as soon as conveniently may be after my death an inventory shall be taken of the

Directions to take inventory.

(*c*) See *Re Zouche*, [1919] 2 Ch. 178.

(*d*) As to exemption from duty in certain cases on objects of national,

heirlooms, and such inventory (subject to its being revised as occasion shall require) shall be signed by every person for the time being entitled to the enjoyment of the heirlooms (hereinafter referred to as "the tenant for life") if and when of full age, and also by my trustees, and the heirlooms shall at all times be kept adequately insured against loss or damage by fire (so far as the same are capable of being so insured) [and burglary], and properly preserved, by and at the expense of the tenant for life, and all money received in respect of any such insurance shall be applied in or towards replacing or repairing the heirlooms destroyed or injured [or stolen]; BUT any of the heirlooms may from time to time be exchanged, or the form and fashion thereof may be altered at the expense of the tenant for life, provided that the intrinsic value thereof be not diminished. PROVIDED that after the tenant for life shall have signed the inventory aforesaid, my trustees shall not be bound to see to the insurance or preservation of the heirlooms, or any of them, and shall not be responsible for any omission or neglect on the part of the tenant for life with respect to the insurance or preservation thereof, nor for any loss or damage occasioned by any other act or omission on the part of the tenant for life, but my trustees shall not be precluded from interfering for the protection of the property when and as they shall think fit.

Trustees not to be liable for the insurance or preservation of the property (*e*).

6. [*Specific or pecuniary legacies, as in Precedents II., III., and VII.*]

7. I BEQUEATH all my personal estate (except what I otherwise specifically dispose of by this my Will, or any Codicil hereto) UNTO my trustees, UPON TRUST for sale, calling in and conversion, with power to postpone the same (including that of terminable or wasting property, and in particular to retain existing investments but not to sell reversionary property until it falls into possession, unless my trustees consider an earlier sale desirable), such part of my said personal estate as shall not consist of money; AND UPON TRUST out of the money to arise from such sale, calling in, and conversion, or forming part of my said personal estate, to pay my funeral and testamentary expenses and debts, and pecuniary legacies bequeathed by this my Will or any Codicil hereto, and the duty on all

Bequest of residuary personal estate upon trusts for conversion, &c., and subject thereto to go as capital money arising from settled land.

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scientific, or historic interest, see Finance Acts, 1894 (sect. 15), 1896 (sect. 20), 1910 (sect. 63), and 1921 (sect. 44).

For recent examples (under the former law), where heirlooms were settled so as to go along with entailed real estate, see *Portman* v. *Portman*, [1922] 2 A. C. 473; *Re Whitburn*, [1923] 1 Ch. 332; *Re Penton*, [1924] 2 Ch. 192.

(*e*) As to the power of the trustees in respect of insurance, see *Re Egmont*, [1908] 1 Ch. 821; and as to the rights of the parties in respect of the insurance money, *Re Quicke*, *ib.* 887. Compare the statutory form at p. 607.

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legacies given free of duty, and so that all such expenses, debts, legacies, and duty shall be discharged out of capital only and not out of income, and so as to exclude the rule known as that in *Allhusen* v. *Whittell* (*ee*). AND shall hold and apply the residue of the same money (herein called "the residuary fund") UPON the same trusts and subject to the same powers and provisions, or such as shall correspond (as nearly as may be) with the limitations of the freehold and leasehold land hereby settled, as if the residuary fund had been or represented capital money arising under the Settled Land Act, 1925, from the settled land (*f*). [*Add here powers additional to those conferred by the Settled Land Act, 1925; powers of investment; power (if desired) for any one or more of the tenants for life to appoint new trustees; and other trustee clauses: see Precedent III.*] IN WITNESS, &c.

## XV.

PRECEDENT XV.

BY PERSON WITH ENTAILED INTEREST.

### WILL BY *person with* ENTAILED INTEREST *exercising his Statutory Power* (*g*).

I, A., of, &c. [*revoking prior Wills and appointing executors, &c., as in preceding Precedents*].

In exercise of the power conferred on me by the Law of Property Act, 1925, and of all other powers, I HEREBY devise, bequeath and dispose of unto B., of, &c., for his absolute use and benefit, ALL THAT the property real and personal (including money subject to be invested in the purchase of property to be held upon the same trusts) to which, by virtue of the Settlement [Trust Instrument] dated, &c. [settlement created by the Will dated, &c., of C., of, &c., who died, &c., and whose said Will was proved, &c.], or otherwise I shall at my death be entitled for an entailed interest as tenant in tail male [or in tail] in possession, or as owner of a base fee in possession as if, after barring the entail or enlarging the base fee, I had at my death been tenant in fee simple or absolute owner thereof for an equitable interest. [*Residuary devise and bequest and other provisions, as in preceding Precedents.*] IN WITNESS, &c.

(*ee*) See p. 565, n. (*k*).

(*f*) See S. L. Act, 1925, sect. 78.

(*g*) See L. P. Act, 1925, sect. 176, set out under General Remarks, above. This Precedent is given merely as a general disposition, and is applicable to an entailed interest in any kind of property. In most cases it would be preceded by a specific description of the particular property intended to be dealt with, unless it formed part of the residuary gift.

## XVI.

PRECEDENT XVI. — IN CONTEMPLATION OF MARRIAGE.

WILL *in* CONTEMPLATION *of* MARRIAGE. *Alternative Provisions if marriage does not take place* (*h*).

I, A., of, &c., hereby REVOKE all prior testamentary dispositions, and DECLARE this to be my LAST WILL, which I make in contemplation of my marriage as hereinafter mentioned.

### PART. I.

Provisions in contemplation of marriage.

This Part of my Will is made in contemplation of my marriage with ——, of, &c. (herein called "my wife [husband]"), and is conditional on the said marriage being solemnised on or before the —— day of —— (herein called "the fixed date"). [*Here follow provisions as in Wills of a married person.*] LASTLY, I declare that if such marriage shall not be solemnised on or before the fixed date, all property real and personal over which I have any testamentary power of disposition shall, instead of the above provisions, be disposed of in accordance with the provisions in Part II. hereof.

### PART II.

Alternative provisions.

This Part of my Will is made in the event of the said contemplated marriage not being solemnised on or before the fixed date, in which event I declare that all the provisions in Part I. hereof shall be and the same are hereby revoked, and in their stead the following provisions shall take effect as my LAST WILL. [*Here follow provisions as in Will of bachelor or widower* [*spinster or widow*].] IN WITNESS, &c.

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## XVII.

PRECEDENT XVII. — STATUTORY WILL FORMS.

### THE STATUTORY WILL FORMS, 1925.

Short title.

1. The forms hereinafter contained may be cited as the Statutory Will Forms, 1925, and are divided into two groups called Part I. and Part II. respectively.

Manner of application.

2. The Forms in Part I. may be incorporated in a will by a general reference to that Part, and the Forms in Part I. and Part II. or any of them may be incorporated in a will in manner indicated in the Schedule hereto or in any other manner indicating

(*h*) See L. P. Act, 1925, sect. 177, set out under General Remarks, above. This Precedent is applicable to either a bachelor or widower or a spinster or widow. In effect, it comprises two alternative wills.

PRECEDENT XVII.

STATUTORY WILL FORMS.

an intention to incorporate them, and in the case of Forms in Part II. also indicating what property or disposition is to be affected thereby.

3. In any form when incorporated in a will—

Interpretation.

(i) The provisions thereof shall have effect subject to the express provisions of the will;

(ii) "Disposition" means a devise, bequest, and a testamentary appointment, whether in exercise of a general or special power and includes a disposition under the statutory power to dispose of entailed interests by will; "dispose of" has a corresponding meaning; and references to a testator's property include property which he disposes of in exercise of a power;

(iii) "The trustees" mean the trustees appointed by the testator either generally or for a specific purpose, as the case may require, and the persons who by appointment by the court or otherwise become the trustees, and include his personal representatives, when acting as his trustees;

(iv) "Authorised investments" mean investments authorised by the will creating the trust, for the investment of any money subject to the trusts of the will, or by law.

(v) Other words and expressions have the same meanings as in the Law of Property Act, 1925.

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## FORMS.

### PART I.

FORMS WHICH MAY BE APPLIED EITHER GENERALLY OR BY SPECIFIC REFERENCE.

*Form* 1.

Confirmation of settlements.

I confirm every settlement of property made by me which is subsisting at my death, and subject to any express provision to the contrary in my will, the provisions made by my will for the benefit of persons beneficially interested under any such settlement, shall be in addition to, and not in satisfaction of, those made, or covenanted to be made by me in such settlement.

*Form* 2.

Meaning of "personal chattels" (*i*).

(1) "Personal chattels" shall mean "carriages, horses, stable furniture and effects (not used for business purposes), motor

(*i*) Compare this definition with that in sect. 55, sub-sect. (1) (x) of the A. E. Act, 1925.

cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament (including wearing apparel), also musical and scientific instruments and apparatus, wines, liquors, and consumable stores, but shall not include any chattels used at my death for business purposes, nor money or securities for money."

(2) But a general disposition of personal chattels shall take effect subject to any specific disposition.

*Form* 3.

Inventories and provisions respecting chattels (*k*).

(1) An inventory of chattels given by my will, otherwise than by way of absolute gift, shall be made in duplicate, one part shall be retained by the trustees and the other part shall be delivered to the person of full age for the time being entitled to the use or possession of the chattels, in this clause called the "usufructuary."

(2) A receipt shall be signed by the usufructuary, at the foot of the inventory retained by the trustees.

(3) The inventory delivered to the usufructuary shall, if he so requires, be signed at the foot thereof by the trustees.

(4) On any change of the right to the use or possession of the chattels, a new receipt shall be signed by the usufructuary at the foot of the inventory retained by the trustees.

(5) Where, by reason of the exercise of any power to sell, exchange, purchase, alter the fashion of, or otherwise deal with the chattels, or of any destruction or loss of any chattel, the inventories become inaccurate, the inventories shall be altered and re-signed, or new inventories shall, if convenient, be made and signed.

(6) The trustees may, at their discretion, exclude from an inventory, any chattels which, by reason of their trifling value or wearing out nature, they may consider ought to be so excluded.

(7) Where the chattels have been delivered to the usufructuary and a receipt is given therefor, the trustees, so long as the usufructuary remains entitled to the use of the chattels, shall not be liable in any way—

(a) for any unauthorised disposition thereof or dealing therewith,

(*k*) Such an elaborate provision would not usually be required, except in the case of articles of special value. Compare the forms in Precedents IV and XIV.

PRECEDENT XVII.

STATUTORY WILL FORMS.

(b) to see to the insurance (so far as the same are capable of being insured) repair, or safe custody of the chattels,

unless and until required, in writing, to insure the chattels or to take any proceedings in reference thereto, by some person beneficially interested in the chattels or by his guardian, committee or receiver, and unless also due provision be made, to the satisfaction of the trustees, for the payment of the costs of insurance or of any proceedings required to be taken.

(8) Where there is no person of full age and capacity entitled to the use of the chattels, the trustees may, during the period of disability, make such arrangements for the safe custody, repair, insurance and use of the chattels as, having regard to the circumstances of the case, they may in their absolute discretion think expedient.

*Form 4.*

Legacies to charities (*l*).

The receipt of the treasurer or other proper officer of a charitable benevolent or philanthropic institution, society or body of persons (corporate or incorporate), to which a legacy is given by my will shall be a complete discharge of my personal representatives.

*Form 5.*

Directions respecting annuities.

The following provisions shall have effect in regard to any annuities or annuity given by my will—

(1) The trustees may, and (if so requested by or on behalf of any person beneficially interested in the property affected) (*m*) shall, as soon as may be after any annuity commences to accrue, set apart in their names or under their control authorised investments to provide a fund the income whereof will be sufficient, in the opinion of the trustees, to produce an annual sum equal to the amount of the annuities for the time being payable under my will.

(2) The income or, if necessary, the capital of the fund so appropriated, shall be applied in payment of every subsisting annuity.

(3) Until a fund shall be so appropriated, my residuary estate shall stand charged with the payment of every

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(*l*) A clause to this effect (although perhaps not strictly necessary) is generally inserted : see Precedent VII.

(*m*) Note that the power of the trustees is limited, as it is conditional on being requested to make such appropriation. Compare the form in Precedent VI.

subsisting annuity, but, after appropriation, the said estate shall be thereby discharged therefrom.

(4) The appropriated fund, or, where more than one annuity is bequeathed, such parts thereof as, in the opinion of the trustees, may not be required to answer any subsisting annuity, shall, on the cesser of an annuity, fall into my residuary personal estate.

(5) Accordingly, as each annuity ceases, the trustees may treat as part of my residuary personal estate, the whole or a corresponding part of the appropriated fund, as the case may require, retaining only such part thereof (if any) as may, from time to time, in their opinion, be sufficient to produce, by the income thereof, an annual sum equal to the amount of any subsisting annuities.

(6) Any surplus income of the appropriated fund shall be applied in the same manner as the income of my residuary personal estate.

(7) The trustees may, at their discretion, vary any of the investments for the time being representing the appropriated fund for other authorised investments.

(8) In this clause "annuity" includes any periodical payment (not being a rentcharge) for life or other terminable interest.

*Form* 6.

Power of appropriation.

(1) The power of appropriation conferred by the Administration of Estates Act, 1925, shall be exercisable by the trustees, without any of the consents made requisite by that Act.

(2) So far as practicable, the trustees shall give one month's notice, at least, of an intended appropriation, to the persons whose consent would, but for this clause, be required under that Act; but a purchaser shall not be concerned to see or inquire whether any such notices have been given.

(3) In this clause "trustees" includes my personal representatives.

## PART II.

### FORMS WHICH CAN ONLY BE APPLIED BY SPECIFIC REFERENCE.

*Form* 7.

Trusts of a settled legacy (*n*).

Any legacy of money or investments to which this clause is applied shall be subject to the following provisions :—

(*n*) As to these beneficial trusts, see General Remarks, above p. 562.

PRECEDENT XVII.

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(1) The trustees shall stand possessed of the legacy upon trust to invest the same in their names or under their control in any authorised investments, with power, at the like discretion, to vary the investments thereof for others of a like nature.

(2) The trustees shall stand possessed of the legacy, and of the investments representing the same and all statutory accumulations, if any, of income thereof, hereinafter included in the description of such legacy upon trust to pay the income thereof to the legatee during the life of the legatee.

(3) After the death of the legatee, the capital and income of the legacy shall be held—

In trust for all or any one or more exclusively of the other or others, of the issue of the legatee, whether children or remoter descendants, at such time, and if more than one in such shares, with such provisions for maintenance, education, advancement, and otherwise, at the discretion of any person or persons, and with such gifts over, and generally in such manner, for the benefit of such issue, or some or one of them, as the legatee shall, by deed, revocable or irrevocable, or by will appoint; but so that, under any appointment a child shall not, otherwise than by way of advancement, take a vested interest, except upon attaining the age of twenty-one years or upon marriage.

And in default of and until and subject to any such appointment—

In trust for all or any the children or child of the legatee, who attain the age of twenty-one years, or marry under that age, and if more than one in equal shares (*o*).

(4) Any child of the legatee, who, or whose issue, takes any part of the legacy under any appointment by the legatee, shall not, in the absence of any direction by the legatee to the contrary, take any share in the unappointed part without bringing the share or shares appointed to him or his issue into hotchpot and accounting for the same accordingly.

(5) If the legatee shall not have any child who, under the trusts in default of appointment hereinbefore contained, attains a vested interest in the legacy, then,

(*o*) Note that vesting on marriage is not restricted to females.

subject to the trusts and powers hereinbefore expressed in favour of the legatee and his issue, the legacy and the income thereof and all statutory accumulations, if any, of income shall fall into and form part of my residuary personal estate.

(6) The legatee may, notwithstanding any of the trusts hereinbefore expressed concerning his legacy, from time to time or at any time by deed, revocable or irrevocable, or by will, appoint to or for the benefit of any spouse who may survive the legatee, during the residue of the life of such spouse or for any less period (and subject or not to any conditions, and with such gifts over, and discretionary or other trusts for the benefit of the spouse and issue of the legatee, as the legatee may think fit), all or any part of the annual income of the legacy of the legatee, or of so much thereof as shall not, before the death of the legatee, have been paid or applied under any power affecting the same.

And, upon any such appointment, the trusts and powers limited to take effect after the death of the legatee, shall take effect subject to the interest limited by any such appointment :

Provided that the power last aforesaid, to appoint by deed, shall not be exercisable by a woman while under coverture.

*Form 8.*

Any property disposed of by my will (otherwise than in exercise of a special power) to which this clause is applied shall be subject to the following provisions :— Administration trusts (*p*).

(1) The property shall be held—

(a) as to the real property, if any, including chattels real, upon trust to sell the same, and

(b) as to the personal property, if any, upon trust to call in, sell, and convert into money such part thereof as may not consist of money.

(2) The trustees shall have power to postpone such sale and conversion for such a period as they, without being liable to account, may think proper.

(3) A reversionary interest shall not be sold, until it falls

(*p*) This Form, with some variations, follows the usual devise and bequest of the residuary estate upon trust for sale or conversion, but sub-clause (7) may require modification, according to the circumstances.

into possession, unless the trustees see special reason for sale.

(4) The trustees shall out of the net money to arise from the sale and conversion of the property after payment of costs, and out of any ready money of mine, included in the disposition, pay or provide for

(a) my funeral and testamentary expenses;

(b) my debts, except charges on other property of mine so far as those charges are discharged out of the property primarily charged therewith under the Administration of Estates Act, 1925;

(c) the duties, payable out of capital on my death, and not charged on or primarily payable out of other property;

(d) any other liabilities properly payable out of the property, or the proceeds of sale thereof;

(e) the legacies (including money directed to be paid by my will), and annuities bequeathed by me, but so that all legacies and annuities, and the duty on all legacies and annuities bequeathed free of duty, shall be paid primarily out of personal property, if any, included in the disposition.

(5) The trustees may invest, in their names or under their control, the residue of the said money, or so much thereof as may not have been distributed, in any authorised investments, with power, at their discretion, to vary such investments for others of a like nature.

(6) The income (including net rents and profits of real property and chattels real, after payment of rates, taxes, rent, costs of insurance and of repairs and other outgoings properly attributable to income) of so much of the property as is not required for the administration purposes aforesaid, shall, however the property is invested, as from my death, be treated and applied as income; and for that purpose any necessary apportionment may be made between capital and income.

(7) Provided that—

(a) statutory accumulations of income made during a minority, or pending a contingency, or accumulations made under an express trust

for accumulation, may be added to capital; (*q*)

(b) income may be applied in effecting and maintaining a leasehold sinking fund policy, or may be set aside and invested for providing a fund to answer any liabilities which in the opinion of the trustees ought to be borne by income;

(c) the trustees may in their discretion adjust, in such manner as they shall think fit, having regard to the circumstances of the case, the incidence, as between capital and income, of the payments made in due course of administration.

*Form 9.*

Trusts for spouse for life with power to appoint to issue and gift over to them (*r*).

Any property disposed of by my will (otherwise than in exercise of a special power) to which this clause is applied shall be subject to the following provisions :—

(1) The property (including the investments for the time being representing the same) shall be held upon trust to pay the income thereof to my spouse for life.

(2) After the death of my spouse, the capital and income of the property shall be held—

(i) In trust for all or any one or more, exclusively of the other or others, of my issue, whether children or remoter descendants, at such time, and if more than one in such shares, with such provisions for maintenance, education, advancement and otherwise, at the discretion of any person or persons, and with such gifts over, and generally in such manner, for the benefit of such issue, or some or one of them, as my spouse shall, by deed, revocable or irrevocable, or by will, appoint; but so that, under any appointment, a child shall not, otherwise than by way of advancement, take a vested interest, except upon attaining the age of twenty-one years or upon marriage.

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(*q*) Compare T. Act, 1925, sect. 31, set out under SETTLEMENTS, General Remarks.

(*r*) This and the following Form may be useful as examples of beneficial trusts for a spouse and issue; but as to whether such trusts (even if identical) should be incorporated by reference, see General Remarks, above, p. 562.

(ii) And in default of and until and subject to any such appointment in trust, in equal shares if more than one, for all or any my children or child who survive me and attain the age of twenty-one years or marry under that age, and for all or any of the issue living at my death who attain the age of twenty-one years or marry under that age of any child of mine who predeceases me, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share or shares which his or their parent would have taken if living at my death, and so that no issue shall take whose parent is living at my death and so capable of taking.

(3) Any person who, or whose issue, takes any part of the property, under any appointment by my spouse, shall not, in the absence of any direction by my spouse to the contrary, take any share in the unappointed part, without bringing the shares appointed to such person or his issue into hotchpot, and accounting for the same accordingly.

*Form* 10.

Trusts for spouse and issue, without a power of appointment.

Any property disposed of by my will (otherwise than in exercise of a special power) to which this clause is applied shall be subject to the following provisions :—

(1) The property (including the investments for the time being representing the same) shall be held upon trust to pay the income thereof to my spouse for life.

(2) After the death of my spouse the capital and income of the property shall be held in trust, in equal shares if more than one, for all or any my children or child, who survive me and attain the age of twenty-one years or marry under age, and for all or any of the issue living at my death, who attain the age of twenty-one years or marry under that age, of any child of mine who predeceases me, such issue to take through all degrees, according to their stocks, in equal shares, if more than one, the share or shares which his or their parent would have taken if living at my death; and so that no issue shall take whose parent is living at my death and so capable of taking.

## SCHEDULE.

### INCORPORATION OF ALL THE FORMS IN PART I.

All the forms contained in Part I. of the Statutory Will Forms, 1925, are incorporated in my will [subject to the following modifications, namely*

* Here insert the modifications (if any).

### INCORPORATION OF SPECIFIED FORMS FROM PART I.

The following forms contained in Part I. of the Statutory Will Forms, 1925, shall be incorporated in my will:—

[*Specify those of the following forms which it is desired to incorporate.*]

*Form* 1 (*Confirmation of Settlements*).
*Form* 2 (*Meaning of "personal chattels"*).
*Form* 3 (*Inventories and provisions respecting chattels*).
*Form* 4 (*Legacies to charities*).
*Form* 5 (*Directions respecting annuities*).
*Form* 6 (*Power of appropriation*).

[Subject to the following modifications, namely* ]

* Here insert the modifications (if any).

### INCORPORATION OF SPECIFIED FORMS FROM PART II.

#### FORM 7.

*Trusts of a Settled Legacy.*

Form 7 of the Statutory Will Forms, 1925, is incorporated in my will and shall apply to the following legacies* [subject to the following modifications† ].

* Here insert the legacies of money or investments to be settled.
† Here insert the modifications (if any).

#### FORM 8.

*Administration Trusts.*

Form 8 of the Statutory Will Forms, 1925, is incorporated in my will, and shall apply to* [subject to the following modifications† ].

* Here insert description of property to be held upon administration trusts.
† Here insert the modifications (if any).

#### FORM 9.

*Trusts for Spouse for life with power to appoint to issue and gift over to them.*

Form 9 of the Statutory Will Forms, 1925, is incorporated in my will, and shall apply to* [subject to the following modifications† ].

* Here insert description of the property to be held on trusts for spouse for life with power to appoint to issue and gift over to them.
† Here insert the modifications (if any).

PRECEDENT XVII.

STATUTORY WILL FORMS.

FORM 10.

*Trusts for Spouse and issue without a power of appointment.*

Form 10 of the Statutory Will Forms, 1925, is incorporated in my will, and shall apply to* [subject to the following modifications† ].

* Here insert description of the property to be held on trusts for spouse and issue without power of appointment.

† Here insert the modifications (if any).

# INDEX.

[NOTE.—*The numbers in black type* (*thus,* **43**) *refer to Precedents; those in ordinary type* (*thus,* 28) *to General Remarks or footnotes.*]

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